

STATE WATER CONTROL BOARD MEETING – SEPTEMBER 6, 2006 DOCUMENT - PLEASE NOTE:

THE AGENDA FOR THE MEETING BEGINS ON PAGE 2 AND ENDS ON PAGE 5

THE MINIBOOK BEGINS ON PAGE 6 AND ENDS ON PAGE 25

ADDITIONAL MATERIAL ON THE CITY OF NEWPORTS NEWS BEGINS ON PAGE 26 AND ENDS  
ON PAGE 53

ADDITIONAL MATERIAL ON CAPTAIN'S COVE BEGINS ON PAGE 54 AND ENDS ON PAGE 56

ADDITIONAL MATERIAL ON THE GALLERIA BEGINS ON PAGE 57 AND ENDS ON PAGE 65

TENTATIVE AGENDA  
STATE WATER CONTROL BOARD MEETING  
WEDNESDAY, SEPTEMBER 6, 2006  
HOUSE ROOM D, GENERAL ASSEMBLY BUILDING  
9<sup>TH</sup> & BROAD STREETS  
RICHMOND, VIRGINIA

Convene - 9:00 A.M.

			Tab
I.	Election of Officer(s)		
II.	Minutes (June 1, 2006)		A
III.	Final Regulation: General VPDES Watershed Permit for Total Nitrogen and Total Phosphorus Discharges and Nutrient Nutrient Trading in the Chesapeake Bay Watershed in Virginia	Winter/ Pollock	B
IV.	Permits		
	City of Newport News (not before 10:00 a.m.)	Gilinsky	C
	Captain's Cove, Accomack Co. (not before 1:00 p.m.)	McConathay	D
	The Galleria, Chesterfield Co. (not before 1:00 p.m.)	Seeley	E
V.	Regulatory Petition: Town of Craigsville	Kennedy	F
VI.	Final Regulation: Water Quality Management Regulation – Fast Track Final - Tyson Foods – Glen Allen	Kennedy	G
VII.	TMDLs	Schneider	H
	Four TMDL Reports and WQMP Regulation Amendments:		
	Mill Creek (Shenandoah Co.)		
	Roanoke River (Roanoke, Montgomery, Floyd & Botetourt Co.)		
	Stock Creek (Scott Co.)		
	Spring Branch (Sussex Co.)		
	TMDL Modification and WQMP Regulation Amendment:		
	Bluestone River (Tazewell Co.)		
VIII.	Significant Noncompliance Report	O'Connell	I
IX.	Consent Special Orders – Virginia Water Protection Permit/Wetland Programs		J
	Northern Regional Office	Bowden	
	Three Flags/Culpeper, LLC, Culpeper Co.		
	West Central Regional Office	Dietrich	
	Bench Mark Builders, Inc., Roanoke Co.		
	North Oaks, LLC, Salem		
	Vaughn & Jackson, LLC, Roanoke Co.		
	Piedmont Regional Office	Seeley	
	Greenlawn Memory Gardens, Inc., Hanover Co.		
	James River Commons, LLC, Richmond		
X.	Consent Special Orders - Virginia Pollutant Discharge		K

Elimination System Permits		
Piedmont Regional Office	Seeley	
Omega Protein, Inc., Northumberland Co.		
TA Operating Corp., Hanover Co.		
Southwest Regional Office	Size more	
City of Bristol		
Northern Regional Office	Bowden	
Foxcroft School STP, Loudoun Co.		
King George CSA, King George Co.		
Land 'Or Utility Co., Inc. STP, Caroline Co.		
Pilot Travel Centers, LLC, Caroline Co.		
Rowe Concrete, LLC, Spotsylvania Co.		
Valley Regional Office	Faulkner	
Black Rock Mobile Home Park, LLC, Rockingham Co.		
Kerrs Creek, LLC, Rockbridge Co.		
West Central Regional Office	Dietrich	
County of Alleghany		
Tidewater Regional Office		
Nold		
Norfolk Shiprepair and Drydock Co., Inc., Norfolk		
XI. Consent Special Orders – Other Programs		L
Tidewater Regional Office	Nold	
Bayshore Concrete Products Corp., Northampton Co.		
Valley Regional Office	Faulkner	
Construction Materials Co., Lexington		
Piedmont Regional Office	Seeley	
St. Paul's College, Brunswick Co.		
Old Church Enterprises, Inc., Henrico Co.		
Yazan Ahmad, Richmond		
West Central Regional Office	Dietrich	
Brabham Petroleum Co., Montgomery Co.		
XII. Public Forum		
XIII. Other Business		
FY2007 Revolving Loan Funding List	Gills	M
Future Meetings (December 14, 2006)	Berndt	

## ADJOURN

NOTE: The Board reserves the right to revise this agenda without notice unless prohibited by law. Revisions to the agenda include, but are not limited to, scheduling changes, additions or deletions. Questions arising as to the latest status of the agenda should be directed to Cindy M. Berndt at (804) 698-4378.

PUBLIC COMMENTS AT STATE WATER CONTROL BOARD MEETINGS: The Board encourages public participation in the performance of its duties and responsibilities. To this end, the Board has adopted public participation procedures for regulatory action and for case decisions. These procedures establish the times for the public to provide appropriate comment to the Board for their consideration.

For REGULATORY ACTIONS (adoption, amendment or repeal of regulations), public participation is governed by the Administrative Process Act and the Board's Public Participation Guidelines. Public comment is

accepted during the Notice of Intended Regulatory Action phase (minimum 30-day comment period and one public meeting) and during the Notice of Public Comment Period on Proposed Regulatory Action (minimum 60-day comment period and one public hearing). Notice of these comment periods is announced in the Virginia Register and by mail to those on the Regulatory Development Mailing List. The comments received during the announced public comment periods are summarized for the Board and considered by the Board when making a decision on the regulatory action.

For CASE DECISIONS (issuance and amendment of permits and consent special orders), the Board adopts public participation procedures in the individual regulations which establish the permit programs. As a general rule, public comment is accepted on a draft permit for a period of 30 days. If a public hearing is held, there is a 45-day comment period and one public hearing. If a public hearing is held, a summary of the public comments received is provided to the Board for their consideration when making the final case decision. Public comment is accepted on consent special orders for 30 days.

In light of these established procedures, the Board accepts public comment on regulatory actions and case decisions, as well as general comments, at Board meetings in accordance with the following:

**REGULATORY ACTIONS:** Comments on regulatory actions are allowed only when the staff initially presents a regulatory action to the Board for final adoption. At that time, those persons who participated in the prior proceeding on the proposal (i.e., those who attended the public hearing or commented during the public comment period) are allowed up to 3 minutes to respond to the summary of the prior proceeding presented to the Board. Adoption of an emergency regulation is a final adoption for the purposes of this policy. Persons are allowed up to 3 minutes to address the Board on the emergency regulation under consideration.

**CASE DECISIONS:** Comments on pending case decisions at Board meetings are accepted only when the staff initially presents the pending case decision to the Board for final action. At that time the Board will allow up to 5 minutes for the applicant/owner to make his complete presentation on the pending decision, unless the applicant/owner objects to specific conditions of this permit. In that case, the applicant/owner will be allowed up to 15 minutes to make his complete presentation. The Board will then, in accordance with § 2.2-4021, allow others who participated in the prior proceeding (i.e., those who attended the public hearing or commented during the public comment period) up to 3 minutes to exercise their right to respond to the summary of the prior proceeding presented to the Board. No public comment is allowed on case decisions when a FORMAL HEARING is being held.

**POOLING MINUTES:** Those persons who participated in the prior proceeding and attend the Board meeting may pool their minutes to allow for a single presentation to the Board that does not exceed the time limitation of 3 minutes times the number of persons pooling minutes or 15 minutes, whichever is less.

**NEW INFORMATION** will not be accepted at the meeting. The Board expects comments and information on a regulatory action or pending case decision to be submitted during the established public comment periods. However, the Board recognizes that in rare instances new information may become available after the close of the public comment period. To provide for consideration of and ensure the appropriate review of this new information, persons who participated during the prior public comment period shall submit the new information to the Department of Environmental Quality (Department) staff contact listed below at least 10 days prior to the Board meeting. The Board's decision will be based on the Department-developed official file and discussions at the Board meeting. For a regulatory action should the Board or Department decide that the new information was not reasonably available during the prior public comment period, is significant to the Board's decision and should be included in the official file, an additional public comment period may be announced by the Department in order for all interested persons to have an opportunity to participate.

PUBLIC FORUM: The Board schedules a public forum at each regular meeting to provide an opportunity for citizens to address the Board on matters other than pending regulatory actions or pending case decisions. Anyone wishing to speak to the Board during this time should indicate their desire on the sign-in cards/sheet and limit their presentation to not exceed 3 minutes.

The Board reserves the right to alter the time limitations set forth in this policy without notice and to ensure comments presented at the meeting conform to this policy.

Department of Environmental Quality Staff Contact: Cindy M. Berndt, Director, Regulatory Affairs, Department of Environmental Quality, 629 East Main Street, P.O. Box 10009, Richmond, Virginia 23240, phone (804) 698-4378; fax (804) 698-4346; e-mail: [cmberndt@deq.virginia.gov](mailto:cmberndt@deq.virginia.gov).

## MINIBOOK

9 VAC 25-820-10 et seq. – General Virginia Pollution Discharge Elimination System (VPDES) Watershed Permit Regulation for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Bay Watershed in Virginia: This is a final regulation. The staff will ask the Board to approve the General Virginia Pollution Discharge Elimination System (VPDES) Watershed Permit Regulation for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Bay Watershed in Virginia, VAC 25-820-10 et seq. On March 15, 2006, the Board approved for public comment the draft regulation. The public comment period ran from May 1, 2006 through June 30, 2006, and four hearings were held on the regulation. Most comments received on the regulation, whether at the hearings or through written correspondence, pertained either to the final compliance dates in the tributary-wide schedules of compliance or to the compliance plans required of individual facilities by the general permit. On July 18<sup>th</sup>, DEQ reconvened the Technical Advisory committee to present proposed responses to the public comments and to establish a consensus regarding the schedule and compliance plan requirements. The schedule of compliance in the general permit establishes final compliance dates of January 1, 2011 for both nitrogen and phosphorus in all five of the tributary watersheds. While this date may not be achievable for one or both parameters in these watersheds, DEQ has not received enough information to justify the inclusion of more definitive final compliance dates at this time. This rulemaking is proposed to provide a permitting framework that fulfills the intent of the aforementioned regulatory actions, in accordance with 2005 amendments to §62.1-44.19:14 of the Code of Virginia; these amendments direct the State Water Control Board to issue a Watershed General Virginia Pollutant Discharge Elimination System Permit authorizing point source discharges of total nitrogen and total phosphorus to the waters of the Chesapeake Bay and its tributaries.

Extension of VWP Permit No. 93-0902 for King William Reservoir: At the September 6, 2006 meeting of the State Water Control Board, the Board will be asked to consider the extension of Virginia Water Protection (VWP) Permit No. 93-0902 to City of Newport News, Virginia for construction and operation of the King William Reservoir. This matter is before the Board due to a public hearing that was held regarding the proposed permit extension. Procedural Rule No. 1 (9 VAC 25-230) calls for the Board to make a final permitting decision following the close of an informal hearing.

The City of Newport News is planning to construct a reservoir in King William County to provide water supplies to the cities of Newport News, Hampton, Poquoson, and Williamsburg and the counties of James City, New Kent, King William and York. They have obtained local, state and federal permits for this project, as well as certification from Virginia's Coastal Zone Management Program, and each action taken on this project has generated significant stakeholder interest. The primary issues of concern to the public are the need for the additional water supply, the wetland and river impacts, the impacts to the fisheries, and the impacts to cultural and historic resources.

In 1997, the State Water Control Board issued Virginia Water Protection Permit No. 93-0902 to authorize impacts to 437 acres of wetlands, establish compensatory mitigation requirements, and ensure minimum instream flows in the Mattaponi River will be protected. This permit was appealed by the City of Newport News, by a coalition of environmental organizations and representatives of the Mattaponi Indian Tribes. All of these lawsuits were resolved in favor of the Commonwealth by June, 12 2006. This permit will expire in 2007.

On May 16, 2003, the Marine Resources Commission denied a permit to authorize the use of state-owned bottom lands for this permit. On June 24, 2003 VMRC denied the City's request to conduct a formal hearing on the issue. That decision was appealed by the City of Newport News to the Circuit court. Per agreement between VMRC and the City, the Court remanded the decision to VRMC with instructions to take additional evidence and conduct a hearing. After the formal hearing, VMRC reversed their action and issued a permit which imposed screening and time of year restrictions on the withdrawals to protect the fisheries resources.

The U.S. Army Corps of Engineers evaluated the application for a permit under Section 404 of the Clean Water Act from 1993 through 2005. The final decision to issue the federal permit was made on July 29,

2005. The Mattaponi Indian Tribes, the Chesapeake Bay Foundation, the Southern Environmental Law Center and the Sierra have recently appealed the federal permit.

There has been significant public and political involvement both in support of and in opposition to this project. The regulatory decisions made on this project have been made based upon the best technical and scientific information available and a thorough analysis of the requirements and authorities under each regulatory program. Any changes made to the permit, during either the pending permit amendment or any future renewal of the permit, must be based upon a thorough analysis of the new information gained from the reports generated during the extension period and scientific and technical data provided by the applicant and the public.

On December 13, 2005 The City of Newport News requested a modification of their Virginia Water Protection (VWP) permit for the King William Reservoir project. The modifications would set document submittal deadlines and extend the effective date of the permit by five years (permit to expire in 2012 instead of 2007). This modification would allow time for the completion of a number of studies and plans that were required as conditions of the existing permit. Because of the extended nature of the federal permitting process for this project, many of these actions could not be completed within the schedule contained in the original VWP permit. The City of Newport News has requested a modification to:

- (1) Extend the term of the permit by five years, from December 22, 2007 to December 22, 2012;
- (2) Change the submittal date of the Drought Water Conservation Plan from December 22, 2003 to December 1, 2006;
- (3) Change the submittal date of the Ecological Monitoring Plan from December 22, 2003 to June 1, 2006 (note that this report was received on that date and is currently under review);
- (4) Change the submittal date of the Salinity Monitoring Plan from December 22, 2003 to no sooner than December 31, 2008;
- (5) Change the submittal date of the Final Wetland Mitigation Plan from December 22, 2003 to December 31, 2010; and
- (6) Change the submittal date of the Operations and Management Plan from December 22, 2003 to December 1, 2011.

As construction in wetlands or other state waters cannot begin until the studies are completed, DEQ does not believe that the reservoir can be constructed prior to the proposed expiration date of 2012 and that the City of Newport News will need to reapply for their permit to construct the reservoir. With this proposed permit amendment and extension of the permit to 2012, we can be sure that the results of these studies will be available to the public and to DEQ when evaluating reissuance of the permit.

The draft permit extension was public noticed in the Richmond Times Dispatch, Daily Press, and Tidewater Review newspapers on April 5, 2006 for a 30-day public comment period that ended on May 5, 2006. During the comment period two state agencies, the Virginia Dept. of Health and Dept. of Game and Inland Fisheries, commented on the proposed modification, both in favor of DEQ approving the modification request. Three organizations (Sierra Club, Chesapeake Bay Foundation, and the Coastal Virginia Waterman's Association) and 141 citizens submitted comments all of which included a request that the State Water Control Board hold a public hearing regarding the proposed permit extension. or one or more public hearings. These comments are summarized in Attachment B to this memo.

The DEQ Director granted the request for public hearing, and a Notice of the Public Hearing and comment period was published on the Virginia Regulatory Town Hall web page on Wednesday, June 7, 2006 and in the Richmond-Times Dispatch and the Virginian-Pilot newspapers on Sunday, June 11, 2006. Mr. Michael McKenney, member of the State Water Control Board, served as Hearing Officer at the public hearing, which was held at 7:00 p.m. on July 20, 2006, at the James City County Government Complex in Williamsburg, Virginia. Approximately 130 people attended the meeting and approximately 85 individuals spoke.

DEQ received 733 comments by the close of the hearing comment period on August 4, 2006. A summary of these comments is provided in Attachment A to this memo.

After the public hearing, DEQ received requests to extend the public comment period from Alliance to Save the Mattaponi and from the Virginia Watermen's Association so that organizations could publicize the pending action and solicit additional comments. DEQ has denied these requests.



In addition to the summary of the written and verbal comments received during the draft permit public notice, public hearing and subsequent comment period, we have included an overall summary of the major categories of comments along with our response.

At this time we expect to recommend that the Board consider the following actions:

- Approve the extension of the permit and change in receipt dates for the subject reports, as indicated
- Require that the permittee submit an application for permit reissuance concurrent with submittal of the Final Wetland Mitigation Plan

Captain's Cove Development, Greenbackville, Accomack County: This agenda item concerns State Water Control Board action on a proposed VPDES permit for the above listed facility. Suggested action for consideration by the board regarding this proposed permit: denial of the issuance of the Captain's Cove VPDES permit, VA 0091782, based on information provided by consulting state agencies and Department of Environmental Quality (DEQ) regulations. Captain's Cove is an existing development in the extreme northeast corner of Accomack County on the Virginia Eastern Shore. Currently there are approximately 600 homes in the development. Of these, 400 homes discharge to septic tank/soil absorption fields. 200 homes are served by two lined waste water treatment basins in series, the first with aeration, followed by sand filtration and chlorination with the effluent discharged to one of four infiltration basins where it seeps into the ground. Current flow is about 30,000 gallons per day. This facility is regulated as a "non-discharging" treatment system under a Virginia Pollution Abatement permit (VPA01005) and is permitted for a flow of 100,000 gallons per day.

Captain's Cove Utility Company submitted an application for a VPDES permit that is proposed for a surface discharge of 900,000 gallons per day into Swan's Gut Creek that flows into Chincoteague Bay. The treatment facility would be designed to serve an expanded development in excess of 2200 homes. A draft VPDES permit was prepared to cover the discharge and was placed on public notice on February 15, 2006. In response to the public notice, there were 35 comments received expressing opposition. Most were concerned with the impact of increased nutrients to Chincoteague Bay and the impact of the discharge on shellfishing. In response to these comments, meetings were held on the eastern shore on March 22 and May 15, 2006. Additional issues were raised about the impact of the discharge to aquatic vegetation, the presence of active shellfish harvesting, the existence of nearby protected oyster harvesting sites, called Baylor Grounds, and the concern regarding the increased volume of fresh water into Chincoteague Bay. These issues caused the Tidewater Regional Office to re-evaluate the conditions of the permit. As a result, permit conditions were made more stringent to provide increased nutrient treatment. The applicant has agreed to the more stringent permit requirements. However, there remained questions regarding the nature and extent of the shellfish resource that will be impacted if the permit is issued. As a result, it was determined that a public hearing was in order. The hearing was held on June 21, 2006 with an attendance of approximately 500 people. Virtually all the commenters at the hearing as well as the vast majority of people in attendance were opposed to the permit issuance for the reasons stated above. By the close of the public comment period on July 7, an additional 420 responses were received. 300 of the responses stated their support for the permit citing the need to eliminate septic tank/tile field wastewater treatment or that they had no treatment available to them at present. The primary determining factor governing the issuance of the permit is the preservation of designated uses of the receiving waters in accordance with the Water Quality Standards, including the presence or potential presence of a shellfish resource. Briefly, the matter of affording protection to the shellfish resource has to do with an initial assessment of the existence and extent of a shellfish population and an identification of the potential impact of the proposed discharge on the shellfish resource. Virginia state statutes (Code of Virginia Chapter 8 of Title 28.2 Parts 800-811) and Department of Health regulation (12 VAC5-130-10) require the establishment of condemnation and prohibition areas by the Division of Shellfish Sanitation (DSS) for any sanitary waste discharge to waters capable of supporting shellfish growth. These terms are briefly defined as follows:

Prohibited –The area immediately surrounding the point of discharge. No harvesting of shellfish is allowed by anyone for any reason in a prohibition zone.

Condemned – An additional area beyond the prohibited zone where shellfish may be harvested by permit to be set aside (depurated) in a clean area for a period of time before being consumed or sold. This area may also be referred to as restricted.



In coordination with the above information developed by DSS, The Virginia Marine Resources Commission (VMRC) provides DEQ with information regarding the presence of public shellfishing areas, the presence of shellfish leases held in the proposed zones of prohibition and condemnation, and any information on the general shellfish population in the proposed zones of prohibition and condemnation. In accord with agreements still under formal development, VMRC will additionally state that there is or is not a known shellfish resource now and in the foreseeable future in the condemnation/prohibition zones; or, VMRC may state that they do not know what shellfish resource is in the area in question. In that case VMRC will perform an assessment or review and concur with an assessment of the shellfish resource commissioned by the applicant. In the case of Captain's Cove, it was determined that a shellfish assessment was in order. The applicant commissioned an assessment of the shellfish resource which was performed in October, 2005. The results of the assessment were that the shellfish resource was scattered and, on the average, was below the Maryland standard for consideration as a commercially viable resource. The Maryland definition was used because there is no Virginia standard. VMRC concurred with the findings of the assessment. As permit development progressed, many comments were received regarding the presence of a viable shellfish population in the condemnation zone. In response, VMRC performed their own assessments. The most recent assessment was completed on June 17, 2006. In a letter summarizing the assessment results, VMRC stated:

- "Small areas of commercial viability regarding clam numbers exist within the condemnation areas... A waterman familiar with this area would find it suitable for periodic commercial harvest."

The above statement appears to say that there is a scattered but viable shellfish resource at present in the area of condemnation and there is a potential for this resource to continue or be expanded in the foreseeable future. The following regulatory standards form the basis for the recommendation for denial of the Captain's Cove permit. Department of Environmental Quality Water Quality Standards, 9VAC 25-260-10, Designation of Uses:

- A. All State waters, including wetlands, are designated for the following uses: recreational uses, e.g., swimming and boating; the propagation and growth of a balanced, indigenous population of aquatic life, including game fish, which might reasonably be expected to inhabit them; wildlife, and the production of edible and marketable natural resources, e.g., fish and shellfish.

Department of Environmental Quality Water Quality Standards, 9VAC 25-260-270, Shellfish buffer zones; public hearing:

Before acting on any proposal for a project that, while not contravening established numeric criteria for shellfish waters would result in condemnation by the State Health Department of shellfish beds, the board shall convene a public hearing to determine the socio-economic effect of the proposal. Such proposals include the discharge of treated waste or proposals to otherwise alter the biological, chemical, or physical properties of state waters. If the Marine Resources Commission or the Virginia Institute of Marine Science certify that the project would have no effect on the shellfish use now and in the foreseeable future, the board may dispense with such hearing.

When the board finds that the proposed project will result in shellfish bed condemnation and if the condemnation will violate the general standard, it shall disapprove the proposal.

Department of Environmental Quality Policy for the Protection of Water Quality in Virginia's Shellfish Growing Waters, 9 VAC 25-370-20, Evaluation of Applications:

In the board's decision making process on applications for any new industries, sewage treatment plants, housing developments, marinas, dredging, spoil disposal, bulkheading, or any other new or expanded operations that would directly or indirectly cause condemnation of shellfish growing areas, it will be the boards policy, in giving adequate protection to viable shellfish resources, to include an evaluation of reasonable potential as well as actual productivity data for the affected areas.

Department of Environmental Quality Policy for the Protection of Water Quality in Virginia's Shellfish Growing Waters, 9 VAC 25-370-30, coordination with other agencies:

In its continuing efforts of pollution abatement to protect existing water quality and development of new programs as may be necessary for the restoration of currently condemned shellfish areas, it will be the policy of the board to integrate its programs with other state and federal programs which would also have as their sole or partial objective the continued viability of the Commonwealth's seafood and shellfish resources.

These parts of the regulation state that in consultation with other state agencies and as a result of information provided by them, under authority provided by regulation, DEQ has learned that there is a definitive shellfish population in the area of the proposed discharge from Captain's Cove waste water treatment plant. In addition, there is a reasonable potential for this resource to continue to develop and to expand. The discharge from Captain's Cove will result in the establishment of a condemnation area where one has not previously existed. The presence of the condemnation area will result in a violation of the general water quality standard in that edible and marketable shellfish, as well as recreation afforded by the presence of shellfish, will be lost. As a result, per the water quality standards, the permit should not be issued.

VWP Permit No. 04-0761, The Galleria, Chesterfield County: At the September 6, 2006 meeting of the State Water Control Board, the Board will be asked to consider the issuance of Virginia Water Protection (VWP) Permit 04-0761 to HMK L.L.C. for The Galleria Development. The project consists of the construction of a mixed-use development known as The Galleria. The project includes a roadway, known as Boulders Parkway Extension, which provides access to the main portion of the development. The development also includes the construction of road crossings, parking lots, residential or commercial buildings, and associated infrastructure on a 165-acre site. A drawing of the proposed project is attached. Overall, the site contains approximately 27 acres of wetlands and 9,479 feet of stream channel. As indicated in the Functional Assessment provided by the applicant, the wetlands and streams associated with Powhite Creek and Long Branch Creek that will be impacted by the construction of Boulders Parkway Extension are high quality with respect to wildlife habitat, fish and shellfish habitat, groundwater recharge, floodflow alteration, sediment retention, nutrient removal, production export, and aesthetics. Water quality impacts are expected to be temporary and minimal provided the permittee abides by the conditions of the permit. The proposed permit was drafted in accordance with the VWP Permit Regulation (9 VAC 25-210-10 et seq.). The draft permit authorizes permanent impacts to no more than 1.79 acres of palustrine, emergent wetlands, no more than 1.74 acres of palustrine, forested wetlands, and 1950 linear feet of intermittent stream channel and 76 linear feet of perennial stream channel associated with Powhite Creek, Long Branch Creek, and associated unnamed tributaries. To compensate for the wetland impacts, the applicant will purchase available credits at the Virginia Habitats II Mitigation Bank in Charles City County, Virginia. Impacts will be compensated at ratios of 2.5:1 for permanent forested wetland impacts (4.48 acres debited) and 2:1 for permanent emergent wetland impacts (3.48 acres debited). The compensatory mitigation ratios for wetland impacts are above the standard ratios because the construction of the parkway results in direct impacts and fragmentation of high quality wetlands. The applicant offered and agreed to provide compensation at these higher than standard ratios as a way to mitigate the impact to the high quality wetlands. Stream channel impacts will be compensated through the restoration of stream channel at the Midlothian Coal Mine Park in Chesterfield County, Virginia. The linear feet of stream channel to be restored will be determined in the final compensation plan to be approved prior to impacts. In the event that the permittee is not able to provide enough compensation for stream impacts at the Coal Mine Park site, as determined by DEQ, the permit is written to allow the permittee to provide the remaining compensation at an approved mitigation bank or the Virginia Aquatic Resources Trust Fund. The draft permit was public noticed in the Richmond Times Dispatch on March 8, 2006 for a 30-day public comment period that ended on April 7, 2006. During the comment period, 48 letters or emails were received from the public, representing 67 individuals. A letter was also received from the Crestwood Farms Residence Association. Five letters were also received the next business day after the close of the public notice. All of the comments expressed concerns or opposition to the project as proposed. 46 of the comments received included a request that the State Water Control Board hold a public hearing regarding the issuance of the permit. Issues raised include: Concern about the overall effect of the project on water quality, fish and wildlife, plants, and the impact to high quality wetlands and stream channels; Concern that the wetland and stream compensation required in the draft permit was not in close proximity to the site of the project and would not mitigate the local effects of the loss of wetlands and streams; Concerns about the type of development proposed for the site, its affect on the community, increased traffic and noise, as well as the public benefits of the project.; Concern that the permit application does not show the complete development plans for this site and consequently does not allow an adequate evaluation of wetland impacts. The Piedmont Regional Director granted the request for public hearing, and a Notice of the Public Hearing and comment period was published in Richmond-Times Dispatch on

May 27, 2006. Copies of the notification of the location, date, and time of the public hearing were sent to all of the concerned entities. A public hearing was held on June 28, 2006. 114 individuals signed in at the public hearing and 28 individuals spoke. Twelve additional comments letters were received during the public notice period for the hearing, including one from the applicant. Prior to making a staff recommendation, DEQ staff will present a brief summary of the proposed revisions at the Board meeting.

Town of Craigsville - Petition for Nutrient Waste Load Allocations in 9 VAC 25-720 (Water Quality Management Planning Regulation): Staff will recommend that the Board deny a petition from the Town of Craigsville, which requested nutrient waste load allocations under 9 VAC 25-720, the Water Quality Management Planning (WQMP) Regulation, for their wastewater treatment facility. The Board does not have statutory authority to assign nutrient waste load allocations to new discharges. The Craigsville wastewater plant does not have a VPDES discharge permit first issued prior to July 1, 2005. Therefore, the proposed facility (converting a land application process to a surface water discharge) is considered a new discharge under the Nutrient Credit Exchange Program law. As a new facility, per Virginia Code §62.1-44.19:15.A.4, Craigsville must:

- acquire waste load allocations sufficient to offset the delivered nutrient loads (i.e., nitrogen and phosphorus waste load allocations for the new plant are equal to zero);
- at a minimum, install biological nutrient removal technology.

At the Board's 9/21/05 meeting, nutrient waste load allocations (WLAs) were adopted for significant dischargers in the Shenandoah-Potomac, Rappahannock, and Eastern Shore Basins. At a subsequent meeting on 11/15/05, the Board adopted nutrient WLAs for the remaining significant dischargers in the York and James Basins, thus completing the assignment of annual nitrogen and phosphorus load allocations for the Bay watershed's significant dischargers. At the November meeting the Board also authorized the DEQ Director to receive any petition requesting amendment of the adopted nitrogen or phosphorus WLAs on the Board's behalf and, upon completion of the public comment period on the petition, if the recommendation would be to initiate a rulemaking, the DEQ Director was authorized to take that action. The DEQ Director was not authorized to deny a petition for rulemaking. By letter dated March 22, 2006, Mayor Richard L. Fox of Craigsville requested "an amendment, in accordance with the requirements of 9 VAC 25-10-20. . . of the assignment of a waste load allocation equal to zero to the proposed wastewater treatment plant". The rulemaking to assign nutrient WLAs began in January 2004 and concluded in late 2005. Affected facilities were identified as "significant dischargers" of nutrients, which included municipal wastewater plants with a design flow of 0.5 million gallons per day (MGD) or greater, discharging to non-tidal waters in the Chesapeake Bay watershed. At the time, Craigsville's 0.25 MGD no-discharge wastewater plant was using lagoons followed by spray irrigation fields for treatment, and was not governed by a VPDES permit. For these reasons, Craigsville was not identified as a significant discharger and did not receive nutrient WLAs under amendments adopted by the Board in 9 VAC 25-720. This determination did not constitute a case decision, as it was applied to every locality in the Bay watershed that employed a no-discharge system, was identified as a non-significant discharger, or had no treatment facility at all. The General Assembly addressed non-significant dischargers in the 2005 Nutrient Credit Exchange law (VA Code, Chap. 3.1 of Title 62.1, §44.19:12 - 44.19:19) by allowing for "permitted design capacity" based on the facility's discharge as of July 1, 2005. This action effectively "held the line" on the non-significant dischargers' nutrient loading, but did not assign WLAs enumerated in the WQMP Regulation. Thus, any plant not discharging as of July 1, 2005 under a VPDES permit first issued before that date has no "permitted design capacity" allocation; this condition applies to Craigsville's facility.

Tyson Foods-Glen Allen - Petition for Revised Total Phosphorus Waste Load Allocation in 9 VAC 25-720 (Water Quality Management Planning Regulation): Staff will ask the Board to approve an amendment to the Water Quality Management Planning Regulation (WQMP), 9 VAC 25-720. The revision would make the WQMP total phosphorus (TP) allocation figure for Tyson Foods-Glen Allen (VA0004031) consistent with the TP waste load allocated to this plant under a Total Maximum Daily Load (TMDL) study of the Chickahominy River, a tributary of the James River. The WQMP phosphorus waste load allocation would increase by 83 lbs/yr, which is an insignificant amount in the context of the entire James River Basin's TP waste load allocation of 1.35 million lbs/yr. Because the proposed increase is still protective of water quality and likely to be non-

controversial, it is recommended to use the Administrative Processes Act's provisions for the "Fast-track rulemaking process" (§2.2-4012.1) to complete this action. At their 11/15/06 meeting the Board authorized the DEQ Director to receive any petition requesting amendment of the adopted nitrogen or phosphorus WLAs in 9 VAC 25-720 on the Board's behalf and, upon completion of the public comment period on the petition, if the recommendation would be to initiate a rulemaking the DEQ Director was authorized to take that action. By letter dated June 23, 2006, Steven Dugent, Tyson Foods' Complex Environmental Manager, requested "that VDEQ amend the nutrient waste load allocation as presented in the Draft General VPDES Watershed Permit to reflect those established in the TMDL and enforced under Tyson's current VPDES permit". In November 2005, the Tyson Foods-Glen Allen Facility's discharge permit (VA0004031) was reissued with a total phosphorus (TP) limit of 409 lbs/yr, based on a TMDL study. The TMDL allocation was determined in relation to the sustainable phosphorus levels in the nearby receiving stream that would be protective of water quality. During this time, the TP waste load allocation under 9 VAC 25-720 was being finalized, with an underlying assumption that the TMDL requirement would also serve as the WQMP allocation. In other words, the WQMP allocation associated with the total James basin nutrient loads would not be more stringent than what was necessary to protect local water quality. It is now apparent that the WQMP allocation (TP = 326 lbs/yr) used a differing assumption for the design flow figure, which is affected by the fact that the facility is operated fewer than 7 days per week, but the allocation is expressed in pounds per year. The design flow and TP concentration bases for the TMDL and WQMP waste load allocations have been reviewed and made consistent, with the result being an identical figure of 409 lbs/yr for both discharge limitations. SUBSTANCE OF PROPOSED AMENDMENT: Water Quality Management Plan Regulation; 9 VAC 25-720-60. James River Basin.

C. Nitrogen and phosphorus waste load allocations to restore the Chesapeake Bay and its tidal rivers. For the Tyson Foods-Glen Allen Facility (VA0004031), revise the total phosphorus (TP) waste load allocation figure from 326 to 409 pounds per year. Also revise the total basin TP waste load allocation figure from 1,354,292 to 1,354,375 pounds per year. A copy of the amended section for 9 VAC 25-720-60 is attached.

TMDLs: 1. Approval of portions of four TMDL Reports containing four TMDLs, and authorization to update the appropriate Water Quality Management Plans: Staff will propose Board action on four EPA-approved TMDL reports containing four TMDL WLAs, three for sediment and one for phosphorus [Mill Creek (Shenandoah County), the Roanoke River (Roanoke, Montgomery, Floyd and Botetourt Counties), Stock Creek (Scott County), and Spring Branch (Sussex County)]. Staff intends to recommend that the Board approve portions of these TMDL reports [the TMDL itself and all the TMDL allocation components, the pollutant reduction scenarios, implementation strategies, reasonable assurance that the TMDL can be implemented, and a summary of the public participation process]. The remainder of the TMDL report is support information. 2. Approval of a TMDL modification, and authorization to update the appropriate Water Quality Management Plan: Staff will propose that the Board approve a modification of the sediment TMDL for the Bluestone River (Tazewell County) in the New River Basin (9 VAC 25-720-130.A). Since the Board's approval of the original TMDL in September 2004, the Bluefield Westside Wastewater Treatment Plant, located in the Bluestone River watershed, has applied for a modification of their discharge permit to accommodate an increase in flow. EPA has approved the expanded WLA and TMDL resulting from this increased discharge because the increase is not expected to negatively impact water quality. No other changes to the TMDL were necessitated by accommodating this expanded discharge. The load allocation and all reduction scenarios remain unchanged. Staff will also seek Board authorization, pursuant to 40 CFR §130.7(d)(2), to update the appropriate Water Quality Management Plans to include the approved TMDL modification. 3. Amendment of Water Quality Management Planning Regulation to incorporate four new waste load allocations and one modified waste load allocation: Because Virginia's water quality standards do not specify numeric criteria for sediment or phosphorus, the four new and one modified WLAs must be adopted as part of the WQMP regulation. This process is specified in DEQ's "Public Participation Procedures for Water Quality Management Planning". Staff will therefore propose that the Board, in accordance with §2.2-4006A.4.c. and §2.2-4006B of the Code of Virginia, adopt the amendments to the WQMP Regulation (9 VAC 25-720). 4. At previous meetings, the Board voted unanimously to delegate to the DEQ Director the authority to approve TMDLs that do not require regulatory adoption of WLAs, as well as all TMDL IPs, provided that a summary report of the action the



Director plans to take is presented to the Board prior to the Director approving the TMDL reports. Staff intends to utilize this delegation of authority for the approval of twelve bacteria TMDL reports.

**REPORT ON SIGNIFICANT NONCOMPLIANCE:** Two permittees were reported to EPA on the Quarterly Noncompliance Report (QNCR) as being in significant noncompliance (SNC) for the quarter ending March 31, 2006. The permittees, their facilities and the reported instances of noncompliance are as follows:

Permittee/Facility: Town of Colonial Beach, Colonial Beach Sewage Treatment Plant

Type of Noncompliance: Failure to Meet Permit Effluent Limit (Ammonia Nitrogen)

City/County: Colonial Beach, Virginia

Receiving Water: Monroe Bay

Impaired Water: Monroe Bay is listed on the 303(d) report because of seasonal condemnation of shellfish beds. The source of the contamination giving rise to the condemnation is unknown.

River Basin: Potomac and Shenandoah River Basins

Dates of Noncompliance: December 2005 and February and March, 2006

Requirements Contained In: VPDES Permit

DEQ Region: Piedmont Regional Office

Staff of the Piedmont Regional Office are evaluating this case for formal enforcement action.

Permittee/Facility: City of Hopewell, Hopewell Wastewater Treatment Facility

Type of Noncompliance: Failure to Meet Permit Effluent Limit (Carbonaceous Biochemical Oxygen Demand)

City/County: Hopewell, Virginia

Receiving Water: Gravelly Run

Impaired Water: Gravelly Run is not listed on the 303(d) report as impaired.

River Basin: James River Basin

Dates of Noncompliance: December 2005 and January 2006

Requirements Contained In: VPDES Permit

DEQ Region: Piedmont Regional Office

Staff of the Piedmont Regional Office are evaluating this case for formal enforcement action.

Three Flags/Culpeper, LLC, Culpeper County - Consent Special Order w/ Civil Charges: Three Flags Associates (original permittee) proposed to construct a 357-acre mixed density residential community consisting of new-town style single family homes, larger single family estate lots, and condominiums in Culpeper County, Virginia. The Permit was issued to Three Flags Associates for the first half of this project, which is known as Three Flags – Phase I (“Phase I”). The Permit was transferred from Three Flags Associates to JCE, Inc. on August 15, 2005 and from JCE, Inc. to Three Flags/Culpeper LLC (“Three Flags”) the current Permit holder on May 23, 2006. Pursuant to the Permit, stream compensation would be in accordance with the Three Flags Final Stream Mitigation Plan (“Mitigation Plan”) dated September 3, 2003 and revised October 7, 2003. A historical file review conducted by DEQ revealed that Three Flags violated the Permit by purchasing wetland credits from Blackjack Wetland Mitigation Bank on July 7, 2004 when the deadline was March 15, 2004 and by failing to submit documentation indicating whether conservation easements had been recorded along 1,392 linear feet of stream channel. Subsequently, DEQ approved Three Flags Declaration of Restrictive Covenants and Conservation Easement Plat on June 7, 2006. Three Flags has until October 5, 2006 to submit evidence to DEQ that these documents have been recorded with Culpeper County. Further violations noted were for Three Flags failing to submit two annual mitigation monitoring reports for on-site stream compensation activities that were initiated prior to January 4, 2005; not including a construction schedule for completing work at each impact area with the Notice of Construction dated June 2, 2004; and not including pre-construction photographs for Impact No. 7 with the Pre-Construction Monitoring Report dated September 10, 2004. Finally, the file review revealed that Three Flags failed to monitor water quality parameters after rerouting the intermittent stream. DEQ conducted compliance site visits on January 4, 2005 and August 3, 2005 that revealed the required stream mitigation (i.e. planting of riparian buffers) had been initiated but not completed in accordance with the mitigation schedule. Angler Environmental (“Angler”), an authorized agent of Three Flags, also informed DEQ

at the August 2005 site visit that the length of the relocated stream was 92 linear feet longer than what was approved for in the Mitigation Plan. DEQ staff visited Phase I on February 8, 2006 and noted that despite the installation of erosion and sediment controls that approximately half the stream channel was filled with sediment causing disruption of the stream flow. DEQ, Angler, and Three Flags representatives met on February 28, 2006 and again on May 23, 2006 to discuss permitting and compliance issues. Angler notified DEQ that construction of Phase I resulted in additional impacts over what was approved in the Permit. The additional impacts resulted in an increase of permanent impacts of 0.01 acres of PFO wetlands, 0.18 acres of PEM wetlands, 154 linear feet (0.02 acres) of intermittent stream channel, and 70 linear feet (0.02 acres) of perennial stream channel. DEQ issued Notice of Violation (NOV) No. 2006-04-NVRO-002 to Three Flags on April 21, 2006 for the above-referenced violations. To immediately address the compliance issues Angler submitted a draft Sediment Removal Plan which outlined remedial actions that would be used to remove the sediment that accumulated in Gaines Run. A revised Sediment Removal Plan was submitted to DEQ and approved on June 2, 2006. The sediment was removed from Gaines Run in accordance with the Sediment Removal Plan on June 19, 2006. Angler also submitted to DEQ a revised Mitigation Plan that was approved by DEQ on June 23, 2006 to provide compensation for the additional 224 linear feet of unauthorized impacts that occurred during construction of Phase I. The total cost of performing the supplemental mitigation required by the proposed Order is \$117,676. The proposed Order requires the Three Flags to complete an additional 231 linear feet of onsite stream mitigation, purchase wetland credits, and make a contribution to the Virginia Aquatic Resources Trust Fund. Civil charge \$23,000

Bench Mark Builders, Inc., Roanoke County - Consent Order with civil charge: Bench Mark Builders, Inc. is constructing The Preserve at Two Fork Road subdivision in Roanoke County. In April and May of 2005, Bench Mark representatives met with DEQ and U.S. Army Corps of Engineers staff at the Two Fork Road site to discuss VWP permit requirements. DEQ and Corps staff advised Bench Mark that a VWP permit would be required to impact the stream at the site. In an inspection on February 28, 2006, DEQ staff determined that Bench Mark had relocated about 150 linear feet of perennial stream without a VWP permit. DEQ issued a Notice of Violation for that violation on March 20, 2006. Bench Mark submitted a Corrective Action Plan seven days later. DEQ approved the Corrective Action Plan on March 27, 2006. On May 24, 2006, DEQ issued VWP General Permit Authorization No. WP4-06-1115 to Bench Mark for relocation of 160 linear feet of perennial stream channel and stabilization of 81 linear feet of high gradient stream channel at The Preserve at Two Fork Road. The order requires Bench Mark to pay a civil charge and comply with the approved Corrective Action Plan. Because Bench Mark has now obtained a VWP General Permit Authorization for the project, no additional actions are necessary. Civil charge \$5,000

North Oaks, LLC, Salem - Consent Order with civil charge: North Oaks, LLC is a residential development company. North Oaks is in the process of developing a subdivision on a 33.5 acre site. From late 2004 to early 2005, North Oaks constructed a storm water management structure in wetlands previously delineated by a consultant for North Oaks. This construction impacted 507 linear feet of non-perennial stream and 0.40 acres of emergent wetlands. DEQ staff inspected the site in March 2005 and issued a NOV to North Oaks for unpermitted disturbance of the stream and wetlands on March 15, 2005. DEQ received a permit application from North Oaks on October 3, 2005. The application contained deficiencies which were subsequently corrected by North Oaks. Virginia Water Protection ("VWP") General Permit No. WP4-05-2328 was issued by DEQ on June 8, 2006. The order requires North Oaks to submit a compensatory mitigation plan for review and approval and to comply with the approved plan in accordance with its VWP Permit. Civil charge \$7,000 As a Supplemental Environmental Project, North Oaks is required to make a donation of \$5,250.00 to the Salem Fire/EMS Department specifically designated for purchasing hazmat equipment.

Vaughn & Jackson L.L.C. Consent Special Order w/ Civil Charges: The Company has a VWP permit with which they experienced continuous delays in meeting Permit submittal/filing deadlines, and numerous other operational requirements. The submittal/filing delays alone left DEQ in a position of not being able to provide assurances that the property was not being further changed or modified in an unapproved manner. The Company failed to provide proper oversight of its contractors in administering their Storm Water Pollution



Prevention Plan (SWPPP) and the requirements for adhering to that SWPPP. Additionally, the Company has failed to place any emphasis on the need for compliance since receiving the first NOV and continued in unacceptable practices. The Company continued to operate with additional significant deviations from the Permit requirements, law, and regulations as shown by a second unauthorized dewatering event despite assurances from the owner that this would not reoccur. Additionally, they failed to address the existing problems identified in the first NOV and the second NOV identified more of the same type of problems, at different locations, found in the first NOV. Back Creek problems identified five families of macroinvertebrates that were absent at the impact site as compared to the reference site which is just upstream of the point of discharge into Back Creek. The differences between the reference and impact sites are very noticeable. In the Creek below the point of discharge, the spaces between the rocks are choked with sand and fine particles. This has resulted in the area just below the discharge now useful as a glide (shallow with uniform depth and flow) habitat only. At the reference site, benthic macroinvertebrates were collected in the riffle areas among cobbles and boulders as well as in leaf packs. However, in the impacted area the dominant habitats for the benthic macroinvertebrates are leaf packs and snags because the substrate where they would normally thrive is now surrounded by sediment. This has resulted in an immediate water quality impact and eventually, the benthic macroinvertebrate community will change as a result of this habitat shift. An on-site wetland was also impacted by erosion and sedimentation control implementation failures. The Order requires the payment of a civil charge and corrective remedial actions to Back Creek and an on-site wetland. Since the signing of the Order the Company has come into compliance with Permit requirements and is following the Corrective Action Plan. \$31,000 for unauthorized discharge of waste to State waters, failure to meet the following requirements: Part I.C.5 of the Permit: "installation/maintenance of erosion and sedimentation controls, Part I.C.6 of the Permit: immediately stabilizing exposed slopes and stream banks upon completion of the project, Part I.C.17 of the Permit: discharging untreated storm water runoff directly into surface waters without appropriate best management practices, Part I.D.3 of the Permit: failure to install road crossing in the dry via the implementation of cofferdams, sheetpiling, stream diversions, or other similar structures.

Greenlawn Memory Gardens, Inc., Hanover County - Consent Special Order – w/Civil Charges: On March 9, 2006, DEQ staff inspected Roselawn Cemetery, which is owned by Greenlawn Memory Gardens, Inc. Staff observed that three separate forested wetland areas totaling approximately 2.27 acres had been cleared, grubbed, and partially filled. DEQ has not issued a Virginia Water Protection Permit for these impacts to wetlands. On March 24, 2006, the Department issued a Notice of Violation (NOV) to Greenlawn Memory Gardens for the apparent violations described above. Department staff and representatives from Greenlawn met on April 7, 2006, to discuss the NOV and proposed corrective action. The proposed Order requires restoration of all impacted wetlands and submittal of a joint permit application if any permanent impacts to wetlands are proposed. The Order also requires monitoring to ensure success of wetland restoration activities. Fulfillment of the requirements of the Order will cost approximately \$25,000. Civil charge \$15,165

James River Commons, LLC, Richmond - Consent Special Order – w/Civil Charges: On May 17, 2006, DEQ staff inspected the James River Commons townhome construction project, which is owned by James River Commons, LLC ("JRC"). Staff observed that inadequate installation and maintenance of erosion and sediment controls resulted in the deposition of up to 8 inches of sediment over approximately 1,650 linear feet in two stream channel segments and adjacent wetlands on an adjacent property not owned by JRC. DEQ has not issued a permit for the impacts. On June 6, 2006, the Department issued a Notice of Violation (NOV) to James River Commons, LLC ("JRC") for the apparent violations described above. JRC agreed to implement a corrective action plan to repair the excessive sedimentation. The proposed Order requires restoration of all impacted wetlands and streams. The Order also requires monitoring to ensure the success of restoration activities. Fulfillment of the requirements of the Order will cost approximately \$25,000. Civil charge \$15,000. The charge will be paid as follows: \$5,503 as a monetary penalty and \$9,497 through the completion of two Supplemental Environmental Projects. The first project is the permanent stabilization of the headwaters of a stream channel adjacent to the JRC project. The channel will be stabilized through the construction of a stormwater management basin and/or natural stream channel design techniques. The stabilization will eliminate severe ongoing erosion and incision of the stream channel that is caused by factors other than the JRC project. The

second project is the removal of waste tires historically dumped along the stream channel downstream of the JRC project. JRC is not legally required to complete either of the two projects.

Omega Protein, Inc., Reedville - Consent Special Order – w/Civil Charges: A Consent Order was issued to Omega on June 29, 2005, to address ammonia and toxicity violations at outfall 002. The Order also incorporated the remaining requirements of an Order issued on March 26, 2003. The previous Order contained interim limits for cyanide, ammonia and toxicity. On September 30, 2005, the Department issued a Notice of Violation to Omega for failure to meet the Order's interim limit for cyanide, and also for BOD and TSS violations during the June and July 2005 monitoring periods. Omega failed to submit a complete DMR for the January 2006 monitoring period by not reporting fecal, TP, TN, TKN, and Enterococci data. The Order also requires the payment of a civil charge. The Order contains requirements to submit a conceptual engineering report for the cyanide treatment system and for an updated operation and maintenance manual. The Order will also carry forward from the previous Order, the cyanide interim limits until September 1, 2006. Civil charge \$16,500

TA Operating Corporation d/b/a Travel Centers of America, Hanover County - Consent Special Order – w/Civil Charges: TA Operating Corporation d/b/a Travel Centers of America (TCA) owns and operates a wastewater treatment system serving a truck maintenance and retail fueling station known as Richmond Travel Center. On November 17, 2005, the Department issued a Notice of Violation (NOV) to TCA for TSS, total phosphorous, BOD, pH, and ammonia violations during September 2004 through August 2005. After issuance of the NOV, additional violations were reported for October 2005 through January 2006. On March 14, 2006, the Department conducted an AST/UST inspection and found additional violations. The site has an area that is unpaved which affects water quality during rain events. TCA has plans to pave this area and to eliminate the industrial discharge from the drop inlets and from the shop area. Hanover County is working with TCA to develop a permanent stormwater management system. The Order requires the submittal of a corrective action plan and schedules to come into compliance with both the VPDES permit and the AST/UST regulations. The Order also provides for interim effluent limits for TSS and BOD until the completion of the corrective action plan (CAP). Civil charge \$33,900

City of Bristol dba Bristol Virginia Utilities Board - Consent Special Order with Cost Recovery and Penalties: DEQ staff, responding to a report of dead fish, investigated a fish kill in Wolf Creek in Washington County. The site investigation found chlorine in water samples taken from within the kill zone of Wolf Creek. From counts taken during field investigation, an estimated total of 5,359 fish were killed within an approximate kill zone of 3.48 miles of Wolf Creek, below the Bristol Virginia Utilities Board water treatment plant's permitted discharge point. No dead fish were found upstream from the discharge point. The City of Bristol dba Bristol Virginia Utilities Board ("BVUB") owns and operates a water treatment plant located at 22479 Watauga Road, Abingdon, Virginia (Facility). The Facility's process wastewaters (washwater from backwash of sand filters, and periodic draining of the sedimentation and flocculation basins) flow into either of two settling ponds, with a discharge to Wolf Creek via Outfall 001 authorized by VPDES Permit No. VA0028321. A water sample taken from within the water treatment plant's Settling Pond No. 2, the pond in use at the time of the investigation, was tested for total residual chlorine (TRC) concentration. This TRC concentration was greater than could be measured by the chlorine meter being used. After testing of a diluted sample, a calculated TRC concentration of 120 mg/l was obtained. The BVUB had experienced problems with both chlorine leaks and a polymer spill at the water treatment plant. To remedy these violations, staff negotiated the proposed Consent Special Order. The proposed Consent Special Order requires the BVUB to, among other things, 1) report any unusual or extraordinary discharge as quickly as possible, but no later than 24 hours after the event; 2) submit for review and approval an up-to-date, revised Operations and Maintenance Manual within 60 days. This submittal shall incorporate changes implemented as a result of the fish kill, as described in the letter received by DEQ from the BVUB on February 6, 2006; 3) increase effluent monitoring frequencies for Flow, pH and Total Suspended Solids from 1/3M each to 1/Month each; 4) implement effluent monitoring for TRC for a period of six months, as described in Appendix A of the Order; 5) submit a report and evaluation of the effluent TRC monitoring, with a schedule for installation of dechlorination if DEQ determines that it is required; 6) pay \$4,391.72 to cover the

replacement cost of fish killed; 7) pay \$2,821.21 to cover the investigative costs of the fish kill; and, 8) pay a \$8,400.00 civil charge.

Foxcroft School STP, Loudoun County - Consent Special Order w/ Civil Charge: Foxcroft School STP ("STP"), located in Loudoun County, is a 0.075 MGD plant that serves a secondary girl's boarding school with a population of around 300 students and faculty. Foxcroft School ("Foxcroft") owns and operates the STP which discharges wastewater into Goose Creek in the Potomac River Basin. Foxcroft was referred to enforcement on March 14, 2006 for exceeding permit effluent limits for E.coli and Ammonia as Nitrogen. The STP was built in the early 1970's and included a 225,000 gallon polishing tank ("3-day Holding Tank") where effluent was retained to allow for settling prior to UV disinfection. Sometime during 2001, Foxcroft took the 3-day Holding Tank offline and diverted flow from both clarifiers directly to the UV disinfection system. DEQ staff completed a laboratory and technical inspection of the STP on September 18, 2002 and in the summary report sent to Foxcroft recommended that the O&M Manual be updated to reflect the current operations scheme, specifically the 3-day Holding Tank being bypassed. The report also noted that the UV disinfection system should be repaired so that the two (2) assemblies are capable of functioning independently. Foxcroft responded by letter dated November 15, 2002 that staff had begun the process of reinstating the 3-day Holding Tank and that it would be back online no later than February 28, 2003 and that the UV system was repaired. The 2004 permit reissuance contained a special condition and 24-month compliance schedule for the new E.coli standard. Monitoring for the fecal coliform limit continued until Foxcroft could demonstrate that adequate disinfection was being achieved for E.coli. After receiving the results of the fecal coliform/E.coli surrogate study on August 10, 2004, DEQ staff approved Foxcroft's request to discontinue fecal coliform monitoring. The E.coli limit then became effective with the January 2005 monitoring period. Even without the 3-day Holding Tank Foxcroft was able to consistently meet the fecal coliform and also the E.coli limit during the compliance schedule period in 2004. However, as operations and maintenance issues at the STP and the collection system arose in early 2005 when the E.coli limit took effect, Foxcroft experienced an increase in the number of permit effluent limit violations for various parameters. A historical file review of Foxcroft's Discharge Monitoring Report ("DMR") submittals show periods of high daily flows during the wet season, which usually indicates Infiltration and Inflow (I/I) issues within the collection system. With the current design of the STP, these high flows are adversely affecting treatment efficiency. DEQ staff inspected the STP on March 28, 2006 and found that the 3-day Holding Tank was still not, and had never been, put back in service and that the UV system was not functioning properly. DEQ staff and Foxcroft representatives met on April 12, 2006 to discuss these compliance issues and options to return to compliance. Foxcroft proposed an Action Plan to address the deficiencies in the collection system, operations and maintenance of the STP and with how they manage sludge (i.e. 3-day Holding Tank). The proposed Order requires the Foxcroft to: (1) complete an I/I Study; (2) institute an increased monitoring program; (3) if needed, complete a design and feasibility study for installation of a new STP; (4) make minor modifications to the current STP; and (5) put back in service the 3-day Holding Tank or modify the STP to add other process treatment units to consistently meet permit limits. Civil charge \$3,000

King George County Service Authority (KGCSA), Dahlgren WWTP, Oakland Park WWTP and Purkins Corner WWTP - Consent Special Order w/ Civil Charges: Dahlgren WWTP: Dahlgren WWTP has a long history of upgrades to bring its primary treatment method from aeration to biological removal. The Dahlgren Facility has also undergone changes in its capacity. In a constant state of change, the Dahlgren Facility has experienced numerous violations of ammonia and phosphorous effluent limits. As of April 2006, the Dahlgren Facility fundamentally completed its final upgrade to 1.0 million gallons per day (MGD). DEQ has evidence to indicate that KGCSA exceeded Total Kjeldahl Nitrogen (TKN), phosphorous, and chronic toxicity limits. The exceedence of the 7-day chronic toxicity limit to Pimephales Promelas was due to an aeration problem in the oxidation ditch caused by plant upgrades which led to very high ammonia concentrations. KGCSA had not had any problems with toxicity in the past. The exceedence of total phosphorus occurred because the rotor was not functional at one point, which affected the mixing in the oxidation ditch. The TKN problems were the result of shifting treatment abilities during the upgrade of the plant from 0.5 MGD to 1.0 MGD and the long-lasting problem of aeration in the oxidation ditch. KGCSA has experienced numerous problems with rotors that have been ineffective in operating the aeration disc. The two shafts had been repaired various times, and the oxidation

ditches were not adequately aerated during repairs, resulting in elevated TKN levels. Oakland Park WWTP: DEQ has evidence to indicate that KGCSA exceeded TKN and Total Suspended Solids (TSS) limits, was late in submitting the annual progress report regarding final copper limitations, submitted an incomplete Discharge Monitoring Report (DMR), and conducted an incomplete/incorrect sampling procedure. The TSS exceedence was a one-time occurrence due to a high flow and high mixed liquor suspended solids (MLSS) concentration in the aeration tank. The third annual progress report regarding final copper limitations due January 10, 2005, was not received until July 11, 2005. Both aeration blowers at the Oakland Park WWTP burned up in May and June 2005, causing periods when aeration in the tank was reduced. A starter motor was also defective, causing decreased aeration. These mechanical problems caused decreased dissolved oxygen (DO) levels, and increased MLSS, which led to elevated TKN levels. Both blowers and the starter motor have been replaced. Purkins Corner WWTP: DEQ has evidence to indicate that KGCSA exceeded phosphorous, TKN, and TSS limits, failed to report a value for selenium, was late in submitting the annual progress report regarding final metal limitations, exceeded average daily flow, and made a typographical error on a DMR. The Purkins Corner Permit requires KGCSA to submit an annual progress report regarding final metal limitations. The third annual report was due January 10, 2005 and DEQ did not receive it until July 11, 2005. KGCSA explained that selenium failed to be tested in January 2005 because of operator error, and that subsequent samples had been taken and no further selenium problems have been noted. The phosphorous exceedences were due to a malfunctioning alum feed pump that was replaced. A low DO concentration and high MLSS caused the TKN exceedences. KGCSA increased DO in the aeration tank and lowered MLSS by wasting to the digester. The TSS exceedences were due to high DO levels in the aeration basin, along with low MLSS and young sludge. The MLSS was not settling adequately in the clarifier and the fine pin floc was carried through the sand filter and the remainder of the plant. KGCSA made adjustments to the aeration basin to decrease the DO level and raised the MLSS concentration for better settling in the clarifiers to decrease TSS. The Order requires KGCSA to submit an Optimization Plan that identifies shortfalls at the facilities and requires KGCSA to implement the improvements recommended in the Plan. Civil charge \$15,400 with a Supplemental Environmental Project (SEP) consisting of the connection of three county buildings to the public sanitary sewer system that will offset 99% of the recommended civil charge. The value of the SEP was determined to be \$60,000.

Land 'Or Utility Company, Inc. STP, Caroline County - Consent Special Order Amendment w/ Civil Charge: A Consent Special Order was issued to Aqua Utilities, Inc. on June 21, 2004 ("2004 Order") for exceedences of permit effluent limits for TKN, TSS, Ammonia, and BOD at the Land 'Or Utility Company, Inc. Sewage Treatment Plant ("STP"). On July 31, 2003, Aqua America ("Aqua America") acquired the stock of, among other companies, Aqua Utilities, Inc. ("Aqua Utilities"). Aqua Utilities is a wholly-owned subsidiary of Aqua America and is the sole shareholder of Land 'Or Utility Company, Inc. ("Land 'Or"). Land 'Or is the owner and current permit holder for the STP. The original violations that led to the 2004 Order occurred because the STP was not designed to treat for TKN and Ammonia removal or reduction. Appendix A of the 2004 Order required Land 'Or to replace the antiquated STP with a new, expanded facility in a timely fashion to ensure consistent compliance with present and future permit requirements. Land 'Or never began construction on the project and continues to violate permit limits and was referred to enforcement again on November 17, 2005. On November 7, 2005, a meeting was held with DEQ and Land 'Or representatives to discuss the 2004 Order and reasons why Land 'Or would not be able to meet the construction completion deadline. Land 'Or explained that during the design and planning stage for the expanded STP that the recently adopted nutrient regulations were developed for the York River Basin (9 VAC 25-720-120). Since the STP discharges into the York River Basin the nutrient regulations govern what nutrient loading Land 'Or can discharge. Land 'Or asserted that to build a new, expanded facility as originally envisioned in the 2004 Order with nutrient reduction capabilities would significantly increase the capital cost of the expansion project. After evaluating the estimated costs Land 'Or determined that a new plant was no longer financially feasible and instead proposed to send all sanitary sewer flows from the Land 'Or community to Caroline County Wastewater Treatment Plant ("Caroline County WWTP") and take the STP offline. A meeting to discuss the interconnect ("I/C") project with Caroline County WWTP was held on December 29, 2005 with DEQ, Caroline County, and Land 'Or representatives in attendance. Both permittees agreed that if the nutrient loadings for the STP could be exchanged between them, then it would be beneficial for the STP to go offline and for Land 'Or to send all sanitary sewer flows to



Caroline County WWTP. Relying on the current draft of the nutrient trading regulation, on February 10, 2006 DEQ sent both permittees an estimate of what they could expect in terms of nutrient loading exchange if the STP were to go offline and Caroline County WWTP to receive all its flows. Land 'Or developed and submitted to DEQ on April 25, 2006 a construction plan and schedule for the I/C project, which is incorporated into Appendix A of this proposed Amended Order. The proposed amendment to the 2004 Order requires Land 'Or to: (1) complete the I/C project; (2) cease discharging from the STP and send all sanitary sewer flows to Caroline County WWTP; and (3) close the STP in accordance with the approved closure plan. Civil charge \$7,900.

Pilot Travel Centers LLC, Caroline County - Consent Special Order w/ Civil Charge: Pilot Travel Centers LLC (Pilot) is headquartered in Knoxville, Tennessee and owns and operates the Pilot Oil Center #291. The Facility is a travel center, conducting retail sales of fuels (gasoline, diesel, and kerosene), including a convenience store and fast food restaurant. Industrial discharge results from stormwater runoff from the mostly asphalted 4.1-acre site. Runoff is directed into 4 drop inlets that connect to a grit chamber and a 20,000-gallon oil/water separator. Between February and November 2005, Pilot reported five exceedences of the Total Petroleum Hydrocarbons (TPH) Permit limits in its Discharge Monitoring Report (DMR) submissions to DEQ. In January 2006, DEQ conducted a site inspection of the Facility and found many of the requested documents were unavailable, as the Facility was undergoing renovation. After the inspection, the owner began submitting the requested documents to DEQ. During its review, DEQ discovered that the DMR data being submitted as TPH results had been misreported and were actually oil and grease results. This has been the case each month since the Permit was issued in April 2001. The document review revealed that the Storm Water Pollution Prevention Plan (SWPPP) site map had not been updated to reflect the current conditions and the pH meter temperature probe was not certified with a National Institute of Standards and Technology (NIST) traceable thermometer. Pilot's consultant said that the oil and grease reporting was unintentional, and likely resulted from a mistake early on when a wrong lab test was requested. This errant test for oil and grease was repeated sample after sample, month after month, and went undetected until DEQ brought this to Pilot's attention with the February 2006 NOV. Pilot's consultant asserts that the test used by Pilot is accepted by the United States Environmental Protection Agency for both oil and grease as well as TPH. However, the DEQ fact sheet issued with the Permit specified that one of three methods be used, none of which included the method used by Pilot. The site map and personnel have been updated in the SWPPP and the pH meter has been certified at a laboratory with an NIST traceable thermometer. The Order requires Pilot to thoroughly clean the oil and water separator semi-annually (i.e., every 6 months) and to perform an additional cleaning of the oil and water separator when the monthly TPH level is  $\geq 10.0$  mg/L. Pilot is also required to provide DEQ with a completed Chain of Custody & Certificate of Analysis for each monitoring event required by the Permit. Civil charge \$1,900.

Rowe Concrete, LLC, Spotsylvania County - Consent Special Order Amendment w/ Civil Charges: Rowe Concrete, L.L.C. ("Rowe Concrete") owns and operates three concrete plants in King George, Stafford, and Spotsylvania County. A Consent Special Order was issued to Rowe Concrete for all three of its plants on July 5, 2005 ("Order"). As for the Spotsylvania plant ("Facility"), the Order addressed and resolved, among other things, permit violations for failing to comply with pH permit effluent limitations and failing to comply with minimum freeboard requirements. Although Rowe Concrete installed a pH treatment system at the Facility prior to the issuance of the Order, it had continued to violate pH permit effluent limitations and it was referred to enforcement again on January 6, 2006. On October 18, 2005, DEQ inspected the Facility and noted that the treatment system was not in operation but there was still effluent being discharged. DEQ staff measured the effluent and the pH exceeded the permit limit. DEQ was never notified about the bypass of the treatment system as required by the permit. Furthermore, DEQ staff completed a records check in the Facility office that revealed that the proper inspection records, operator logs, and training records were not being maintained. Similar to Rowe Concrete's other two plants, wastewater treatment at the Facility consists of a sedimentation and pH treatment process. A tiered three-basin system is used to settle out solids with wastewater then flowing to a septic tank. The pH treatment process utilizes a non-hazardous chemical (sodium bisulfate) to regulate pH levels and automatic sensors that should allow for minimal employee participation. Although all three plants use the exact same treatment system, the Facility is the only one that continues to consistently violate its

monthly pH limits. On May 1, 2006, DEQ and Rowe Concrete representatives met to discuss these compliance issues and options to return to compliance. Rowe Concrete explained that the pH system has not functioned properly because of a series of recent activities at the Facility that had combined to overload the system with solids. Whether it is the concrete trucks turning up solids in the unpaved yard or the recent introduction of large polyester fibers in their product that are clogging the filters, Rowe Concrete asserts that solids from the operation of the Facility have infiltrated the pH treatment tank and resulted in extremely low and high pH readings. Moreover, the clogged filters cause the wastewater to back up in the basins and cause the freeboard violations. Rowe Concrete proposed a series of corrective actions, such as paving the Facility yard, placing additional filters in each of the three settling basins and periodically cleaning the filters before the pH treatment tank to address the deficiencies with the treatment system. With further recommendations and input from DEQ staff, a corrective action plan was developed and incorporated into Appendix A of the proposed amended Order. The proposed amendment to the Order requires Rowe Concrete to: (1) submit a construction plan and schedule for paving a portion of the Facility; (2) submit an inventory sheet of spare parts for the treatment system and ensure that each set of filters for treatment system has two back-ups onsite and that the filters in use are cleaned weekly; (3) submit an organizational/staff chart that details each employees role with respect to the pH system; (4) recycle wastewater within the system and operate the plant in batch discharge until consistent compliance is achieved; (5) develop and maintain maintenance logs for pH meter calibrations and readings; (6) ensure all relevant staff are properly trained with respect to the pH system; and (7) increase monitoring frequency until consistent compliance is achieved. Civil charge \$5,600

Black Rock Mobile Home Park, LLC., Grottoes - Consent Special Order with Civil Charge: Black Rock Mobile Home Park LLC (Black Rock) owns the Black Rock Mobile Home Park Sewage Treatment Plant ("the Facility"). The Facility is located in County of Rockingham, Virginia. The Facility is the subject of VPDES Permit No. VA0088986 ("the Permit"), issued September 1, 2005. On February 15, 2005 DEQ issued a Warning Letter to Black Rock for failing to submit the VPDES permit application (due January 15, 2005) 180 days prior to the Permit expiration date. On March 25, 2005 DEQ issued a Warning Letter to Black Rock for failing to meet the Permit effluent limits as noted on the Discharge Monitoring Report and failing to submit VPDES permit application in a timely manner. On May 10, 2005 DEQ issued a Warning Letter to Black Rock for failing to meet the Permit effluent limits. On November 9, 2005 DEQ issued an NOV to Black Rock for unpermitted discharge to state waters during August 2005 (discharge effluent did not exceed standards set forth in their permit). Permit expired on July 14, 2005 and was reissued September 1, 2005. All violations detailed in the Order have been corrected. Civil charge \$2,600

Kerrs Creek, L.L.C., Consent Special Order with civil charge: The Permit and the Regulation required the former Facility owner to submit an application for reissuance of the Permit by October 5, 2004. On March 21, 2005, Kerrs Creek, L.L.C. bought the Facility. Neither the former owner, nor Kerrs Creek, provided DEQ with either a Change of Ownership form for the VPDES Permit in a timely manner, or a complete VPDES reissuance application, financial assurance mechanism ("FA"), and closure plan as required by the Permit, laws and regulations. On April 3, 2005, the Permit expired. On April 19, 2005, DEQ received from Kerrs Creek a VPDES permit reissuance application. On April 25, 2005, DEQ returned Kerrs Creek's permit application as incomplete and provided comments that needed to be addressed before the application could be deemed complete. DEQ issued an NOV on May 10, 2005, to Mr. Al Sharp, managing member of Kerrs Creek, for unpermitted discharges from the plant since the Permit expired on April 3, 2005, and late submittal of a VPDES reissuance application. DEQ issued an NOV on June 9, 2005, to Mr. Al Sharp, managing member of Kerrs Creek for unpermitted discharges from the plant since the Permit expired on April 3, 2005. On June 24, 2005, DEQ met with representatives of Kerrs Creek in an informal conference to discuss the May 10, 2005 and June 9, 2005 NOVs and resolution of the violations. The June 24, 2005 meeting included discussions of the Facility operations and the need for a plan and schedule of corrective actions to return the Facility to compliance with final effluent limitations. Kerrs Creek indicated it was in agreement with entering into an Order to address the violations. DEQ issued an NOV on July 19, 2005, to Mr. Al Sharp, managing member of Kerrs Creek, for unpermitted discharges during May 2005. On October 3, 2005, DEQ received a revised VPDES permit application. DEQ deemed the application complete on October 25, 2005. However, the permit application did not include an



approvable FA and closure plan, and as such DEQ could not proceed with the issuance of a permit. DEQ issued an NOV on March 17, 2006, to Kerrs Creek, L.L.C. for unpermitted discharges during the period from June 2005 through February 2006. On April 14, 2006, DEQ received a complete and approvable FA and closure plan for inclusion in the permit application package. On April 14, 2006, DEQ received Kerrs Creek's proposed schedule of compliance for the upgrade of the Facility to meet final effluent limitations. Sections of this plan and schedule have been incorporated into Appendix A of this Order. Civil charge \$11,500

County of Alleghany, Consent Order with civil charge: In response to overflows, bypasses, and effluent limit violations, the Board issued a Consent Order in 1999 to Clifton Forge, Alleghany County, and the Town of Iron Gate. The 1999 Order required Alleghany County to construct a new sewage treatment plant ("STP") by December 31, 2004 and reduce inflow and infiltration in the sewage collection system. The 1999 Order was amended in 2001 to extend the deadline for submittal of plans and specifications for the new STP to June 24, 2002. The County complied with neither the construction start deadline for the new STP nor the amended deadline for submittal of plans and specifications. The Order before the Board requires submittal of a construction schedule for the new STP and revises and expands the inflow and infiltration ("I&I") requirements of the 1999 Order. Under the proposed Order, the County is required to submit plans and schedules for construction of the new STP and evaluation of its collection system by August 31, 2006. The Order includes a deadline of December 31, 2010 for elimination of overflows caused by excessive I&I.<sup>1</sup> The Order also requires the County to prepare for DEQ review and approval a corrective action plan ("CAP") for meeting the I&I elimination deadline. The CAP includes the following components: a) a plan for funding the evaluation, planning, and repair requirements of the Order; b) a prioritized plan and schedule for correction of deficiencies identified during the evaluation phase; c) a plan for collecting and analyzing the data necessary to demonstrate compliance with the deadline for elimination of excessive I&I. The Board issued a similar Order regarding corrective action for inflow and infiltration to the Town of Clifton Forge in June 2006. The Town is expected to become a customer of the new County STP. Civil charge \$14,900

Norfolk Shiprepair and Drydock Company, Inc., Norfolk - Consent Special Order with Civil Charge: Norfolk Shiprepair and Drydock Company, Inc. ("NSDD") operates a ship repair and dry dock facility ("Facility") adjacent to the Eastern Branch of the Elizabeth River in Norfolk, VA. NSDD is authorized by VPDES individual Permit No. VA0004405 to discharge process wastewater and stormwater from a number of outfalls. On May 9, 2006 DEQ received a pollution report from the U.S. Army Corps of Engineers ("ACOE"), indicating that sandblast grit, dust, and debris was leaving the Facility sandblast containment area and floating on the water. During a DEQ follow up inspection of the Facility on May 9, 2006 red particulate matter was observed floating on the water, both inside and outside of the protective shrouds intended to contain process materials within the work area. Facility personnel reported that they were blasting red paint from a barge at the time the ACOE vessel was observing the site. DEQ noted that protective shrouds had gaps between them and that the barge on the marine railway extended below the high tide mark and was over the water rather than over a platform as required by permit Best Management Practices ("BMPs"). According to an ACOE report, dust was being carried over protective shrouds and a boom, settling onto the water beyond the work area. NSDD reports having taken corrective action to include the following: contracted an environmental cleanup company to clean up blast and paint residue from the water surface, refreshed paint personnel on BMPs, purchased additional blast containment curtains and hay bails, and conducted a comprehensive inspection of the shipyard. In addition, NSDD states it will conduct training on BMPs related to ship painting operations. The order requires payment of a civil charge and compliance with all permit conditions. A NSDD responsible party executed the order on June 30, 2006. Civil charge \$3,000

Bayshore Concrete Products Corporation, Cape Charles, Northampton County (Eastern Shore) - Consent Special Order with Civil Charge: Bayshore Concrete Products Corporation ("Bayshore") is a precast concrete manufacturing facility. Bayshore was subject to Ground Water Withdrawal Permit No. GW0037900 ("Permit"), issued November 1, 1995, modified October 1, 1998 and expired December 30, 2005. The Permit authorized the

withdrawal and use of 27,700,000 gallons of ground water per year, not to exceed 2,800,000 gallons in a calendar month from eight permitted production wells. Bayshore was required to submit a new ground water permit application to DEQ by April 4, 2005. During an August 16, 2005 meeting Bayshore indicated that the ground water withdrawal well system at the facility consisted of more than the DEQ permitted eight wells. Subsequent information provided to DEQ revealed a total of seventeen wells at the facility, including eight permitted wells, five unpermitted wells, and four heat exchange closed-loop wells. DEQ review determined that the four heat exchange closed-loop wells do not require a ground water withdrawal permit. However, DEQ review also found several deficiencies regarding the Permit and unpermitted wells at the facility: (1) DEQ did not receive a Permit modification request from Bayshore to include the five unpermitted wells, (2) Bayshore did not provide well construction reports to DEQ for the five unpermitted wells, (3) Bayshore did not provide to DEQ geologist reports concerning aquifer withdrawal for review prior to installation of the well pumps, (4) Bayshore did not provide to DEQ a new permit application at least 270 days prior to Permit expiration, (5) Bayshore had been withdrawing ground water from the five unpermitted wells, and (6) Bayshore had been withdrawing ground water from the eight previously permitted wells since the expiration of the Permit. Bayshore was advised of the above referenced observations in a Notice of Violation issued on January 9, 2006. Bayshore submitted an application for a new facility ground water withdrawal permit on January 11, 2006. The permit was deemed administratively complete on July 12, 2006 and is being processed through normal DEQ procedures. As part of the application, Bayshore submitted well completion reports for the five unpermitted wells indicating they had been constructed between 1998 and 2002; meters were installed in these wells in September 2005. Subsequent reports indicated withdrawal activity from nine of the thirteen wells during January and February 2006, following expiration of the Permit. The order requires Bayshore to comply with the terms and conditions specified in Appendix A of the order. Appendix A contains compliance actions for continued withdrawal of groundwater until the permit is issued and provides for submittal of information requested by DEQ to process Bayshore's ground water withdrawal permit application and to determine compliance with the order. Civil charge \$39,000.

Construction Materials Company trading as ConRock-Lexington, Lexington - Consent Special Order with Civil Charge: ConRock, owned by Construction Materials Company, is located at 9 Memorial Lane, Lexington Virginia, and owns the Vehicle. Neither ConRock nor Construction Materials Company is subject of a VPDES Permit. On October 5, 2005 at 1:20 p.m., DEQ received a report from the Rockbridge County Emergency Operations Center (EOC). The Vehicle had collapsed a bridge at Irish Creek, overturned, and discharged about  $\frac{3}{4}$  of a yard of concrete along with an undetermined amount of oil to Irish Creek. At approximately 3:00 p.m., DEQ personnel arrived on scene. Rockbridge County EOC dispatched a team and, along with a contractor, conducted remediation services. The spill occurred around noon and the clean-up was completed at around 8:00 p.m. that same night. On November 15, 2005 DEQ issued a Notice of Violation to Construction Materials Company for waste discharges or other quality alterations of state waters without a permit. All violations detailed in the Order have been corrected. The Order also contains a civil charge and a Supplemental Environmental project. Civil charge \$10,793.28 with a Supplemental Environmental Project of supplying the South River District (SRD) Volunteer Fire Department with needed HAZMAT response items offsetting \$7,500.

St. Paul's College, Lawrenceville - Consent Special Order Amendment: On March 24, 2004 a Consent Special Order was issued to St. Paul's College for unpermitted sewage discharges from manholes located on its property. The sewage is treated in the nearby Town of Lawrenceville wastewater treatment facility. The Order required the College to inspect and address issues found in the sewer lines and manholes on a weekly basis until a more extensive repair to the system could be completed. The Order required the school to secure funding to replace all of its sewer lines by October 1, 2006. The construction was to start no later than October 1, 2005. The Order also contained a \$5,000 civil charge. The Town of Lawrenceville started the bidding process and selected a bid that would complete 80 percent of the project by the deadline in the Order. The price and availability of pipe due to hurricane Katrina caused the funds available at the time to be insufficient to complete the project. The College objected to the bid and asked DEQ on May 4, 2006, to extend the project completion date so that the project could go out for re-bid in a larger pool. The proposed order extends the project completion date to October 1, 2007. The Order contains no additional civil charge.

Old Church Enterprises, Inc. d/b/a West Store, Mechanicsville - Consent Special Order - w/ Civil Charges: West Store is a fast mart and gasoline service station located in Mechanicsville, VA owned and operated by Old Church Enterprises, Inc. On May 18, 2004, DEQ staff conducted a formal inspection of the USTs and Stage II Gas Vapor Recovery systems at West Store. The facility was not in compliance with the UST Notification requirements. The deficiencies included the failure to amend the 7530 Notification form to reflect the change in ownership; not in compliance with the requirements for Release Detection Record Keeping; and also Department staff could not verify compliance with leak protection of the USTs or associated piping. DEQ sent three letters in May and June 2004 reiterating these deficiencies. In July 2005, the facility was notified of a pending inspection and provided a list of the required records to be available at the site. An inspection was conducted in August 2005, which resulted in a subsequent September 20, 2005, Warning Letter (WL). The Warning Letter cited the owners/operators for failure to submit an amended Notification form to reflect a change in ownership and change in tank status; for failure to provide release detection records; and for failure to provide financial responsibility documentation. The Facility did not respond to the WL, and on December 6, 2005, a Notice of Violation was issued for the above violations. The Order requires that Old Church Enterprises, Inc. submit a current annual line tightness and leak detector test results on the piping; repair or replace the out-of-service automatic tank gauging system; and submit copies of the monthly tank release detection testing and monitoring records for the next 6 consecutive months. Civil charge \$5,600

Mr. Yazan Ahmad, 2301 North Ave., Richmond - Consent Special Order - w/ Civil Charges: In April 2004, DEQ received a report from Bennett and Williams, Inc., a contracting firm specializing in underground storage tank (UST) removals, stating that a petroleum release had occurred at the North Avenue Food Market & Deli. Bennett and Williams reported that upon excavation of the 4 USTs from the site, heavily contaminated soils were observed. In response to the report, DEQ staff inspected the site on April 8, and April 15, 2004. Pursuant to the site visit, DEQ requested that Mr. Ahmed, as owner of the USTs, submit an Initial Abatement Measures Report (IA) by June 2004 and a Site Characterization Report (SCR) by July 2004. A combined IA/SCR report was submitted to DEQ in July 2004. The IA/SCR revealed test results that showed elevated residual phase levels of petroleum in the subsurface soils. DEQ requested the installation of monitoring wells to better evaluate the impact of the released petroleum in the groundwater. It was necessary to determine the extent of the plume, and if any receptors were affected by the petroleum release. The SCR Addendum was due on February 15, 2005. In April 2005, DEQ issued a Warning Letter (WL) to the owner for failure to submit a Site Characterization Addendum Report for the petroleum release. Mr. Ahmad did not respond to the WL, and a Notice of Violation (NOV) was issued on June 29, 2005. In August 2005, the required monitoring wells were installed. On January 17, 2006, the requested SCR Addendum was provided to the Department. Mr. Ahmad has completed all of the actions required by the regulations. The only requirement in the order is the payment of a civil charge. \$1,400

Brahman Petroleum Co., Stop In Food Store #144 (formerly the Iron-to Lancer Truck Stop) at exit 128 of I-81- Consent Special Order w/ Civil Charges: Brahman Lancer owns a parcel of real property located near Interstate Highway 81 and exit 128. The property is used for a truck stop where petroleum is sold, mostly to tractor trailer trucks. From 2000 to 2003, DEQ has received five pollution incident reports for the Truck Stop related to petroleum spills and/or released onto the ground. Specifically, on March 12, 2003, DEQ responded to a pollution incident complaint at the Truck Stop.

During the inspection, DEQ learned that a tractor trailer had spilled diesel fuel onto the ground. The diesel fuel discharged into nearby storm water drains and onto adjacent property. DEQ requested that Brahman Lancer cleanup the petroleum spill. Brahman Lancer agreed to a cleanup through a letter submitted to DEQ on November 21, 2003. However, Brahman Lancer did not initiate the cleanup until it hired a consultant on or about April 8, 2004. As part of the remediation, Brahman Lancer removed petroleum wastes and petroleum contaminated soil. However, Brahman Lancer did not immediately dispose of the stored on-site contaminated soil. In addition, there are several discrete areas at the Truck Stop that Brahman Lancer has not remediated and there are several drums of petroleum contaminated soil that Brahman Lancer has not properly disposed. To resolve these alleged violations, Brahman Lancer has entered into a Consent Order with DEQ that requires Brahman Lancer to implement a plan that uses treatment units that will discharge treated storm water run-off into a storm drain

owned by the Virginia Department of Transportation, complete the remediation at the Truck Stop, and properly dispose of all the petroleum contaminated soil, including the drums. Civil Charge: \$5,000

Development of Virginia's FY 2007 Clean Water Revolving Loan Funding List: Title VI of the Clean Water Act requires the yearly submission of a priority funding list and an Intended Use Plan in conjunction with Virginia's Clean Water Revolving Loan Fund (VCWRLF) Federal Capitalization Grant application. Section 62.1-229 of Chapter 22, Code of Virginia, authorizes the Board to establish to whom loans are made, loan amounts, and repayment terms. In an effort to begin the process, the Board needs to consider its FY 2007 loan requests, tentatively adopt a FY 2007 funding list based on anticipated funding, and authorize the staff to receive public comments. On June 1, 2006 the staff solicited applications from the Commonwealth's localities and wastewater authorities as well as potential land conservation applicants and Brownfield remediation clientele. July 14, 2006 was established as the deadline for receiving applications. Based on this solicitation, DEQ received thirty (30) wastewater improvement applications requesting \$763,963,148 in loan assistance.

The federal appropriation for the nation's Clean Water State Revolving Funds for FY 2007 has not been approved yet but is expected to be in the range of \$14 million. State matching funds along with the VCWRLF accumulation of funds through loan repayments, interest earnings, and deallocations from leverage accounts should make an additional \$85+ million available for funding new projects. These funds, in accumulation, will result in approximately \$100 million becoming available during the 2007 funding cycle. We have met with the Virginia Resources Authority regarding the need and ability to leverage this year to meet a large portion of the 2007 loan demand. Preliminary indications are that available resources can be leveraged to create approximately \$300 million to fund projects in FY 2007. These discussions and evaluations are ongoing and will be completed before the September Board meeting. While the exact amount and timing of some of these funds remains uncertain at this time, the staff believes it is prudent to initiate the development of Virginia's proposed FY 2007 clean water revolving loan funding list. Final Board approval of the list will not occur until December.

All 30 wastewater applications were evaluated in accordance with the program's "Funding Distribution Criteria", as revised, and the Board's "Bypass Procedures". In keeping with the program objectives and funding prioritization criteria, the staff reviewed project type, impact on state waters, the locality's fiscal stress, and the project's readiness-to-proceed. The staff reviewed each project's anticipated construction schedule to determine if the proposed project was expected to move to the construction stage during calendar year 2007. The staff determined that five of the FY 2007 applications (City of Buena Vista, Maury Service Authority, Town of Cape Charles, Town of New Market, and Town of Berryville) would not proceed to construction until at least calendar year 2008. The Board's by-pass criteria provide for these projects to be bypassed during 2007 and reconsidered in subsequent funding cycles.

In the interest of assisting the maximum number of applicants with Fund resources, we also looked closely at the larger projects with multi-year construction schedules that could be successfully funded in phases. It appears that four of the projects (Harrisonburg-Rockingham Regional Sewer Authority, Alleghany County, Arlington County, and Prince William County Service Authority) can be partially funded to meet cash flow needs without disrupting construction schedules, allowing more applicants to be addressed this year. Also note that the Town of Woodstock loan need was reduced by the \$6,350,000 that the Board authorized to the Town last year.

The five applicants at the bottom of the funding list (HRSD Atlantic, HRSD Nansemond, HRSD Odor Control, HRSD Incinerator, and Culpeper County) are the lowest priorities based on the Board's ranking criteria, are generally of minor value to water quality improvement, and are not being recommended for funding due to our limited resources.

The funding list and associated recommendations are based on the best information and assumptions currently available to staff from the applications received and discussions with DEQ and the Virginia Resources Authority. A large number of activities will be occurring over the next several months to help clarify these factors including the following: (1) DEQ will hold individual meetings with targeted recipients to verify the information in the applications, especially schedules; (2) more detailed analyses by VRA and their financial advisors regarding the structure, cash flows, and available proceeds from the 2007 leverage; (3) completion of negotiations between loan recipients and DEQ Chesapeake Bay Program staff regarding Water Quality Improvement Fund grants to associated loan recipients which will better determine the local share loan needs of

many of the 2007 applicants; and (4) finalization of the federal budget for 2007 including the federal appropriation for the Clean Water SRF. Due to the complexities, challenges, and assumptions related to of the 2007 priority list development, the staff is recommending that the list be tentatively adopted subject to the verification of information in the loan applications (especially schedules), and the availability of funds from the federal appropriations and the 2007 leverage.



## Additional Material on City of Newport News:

**PURPOSE:** The purpose of the modification of VWP Permit 93-0902 is to allow the permittee sufficient time to prepare, and for DEQ and the public to review, key reports and plans concerning the project prior to any reapplication for permit renewal, so that all pertinent information will be available for that reapplication review. These reports and plans have not been submitted to date due to delays in receiving other permits needed for the project. These same reports and plans are requirements of the VMRC and Corps permits that were issued subsequent to the DEQ permit for this project.

**SUMMARY OF PUBLIC PARTICIPATION PROCESS:** A public hearing to receive comments on a modification request from the City of Newport News to extend the permit expiration date and several document submittal dates in the Virginia Water Protection Permit for the King William Reservoir was held on Thursday, July 20, 2006 at the James City County Government Complex, Board Room. The public comment period for the Permit Extension Request for Virginia Water Protection Permit No. 93-0902 (King William Reservoir) closed on Friday, August 4, 2006.

A total of 733 comments (663 written and 70 verbal) were received regarding this permit action. Comments fell into the following six general categories: I) Support Extension Request; II) Deny Extension Request; III) Deny Extension Request – Changes to Project – Water Withdrawal Schedule & Mitigation Plan; IV) Deny Extension Request – Permit Inconsistencies & Implications of Other Information; V) Deny Extension Request – Viability of the Project and Impact on the Mattaponi River and Wetland Areas; VI) Revoke the Permit & Deny Extension Request – Fundament Changes & Misrepresentation of Material Facts; VII) Opposed to the Reservoir Project; VIII) General Comments. Responses addressing each of these categories of comments are provided below. A summary of the comments is provided in Attachment A: Summary of Comments Received. In addition to comments referenced in, an additional 148 comments were received in response to the public notice of the draft permit modification, bringing the total to 874. A summary of those comments is provided in Attachment B: Summary of Comments Received and Responses Following Notice of Proposed Modification.

**CATEGORY I COMMENT:** SUPPORT EXTENSION REQUEST/SUPPORT RESERVOIR PROJECT (46)

**CATEGORY I RESPONSE:** Accepted comments/Acknowledged receipt of the comments.

**CATEGORY II COMMENT:** DENY EXTENSION REQUEST (24)

**CATEGORY II RESPONSE:** The modifications requested by the City would set document submittal deadlines and extend the effective date of the permit by five years (permit to expire in 2012 instead of 2007). This modification would allow time for the completion of a number of studies and plans that were required as conditions of the existing permit. Because of the extended nature of the federal permitting process for this project, many of these actions could not be completed within the schedule contained in the original VWP permit. A full review and analysis of the permit cannot be undertaken without the information contained in the reports and studies that are the subject of the permit extension. Those reports will be available prior to DEQ review of the reapplication for this permit.

**CATEGORY III COMMENT:** DENY EXTENSION REQUEST – SIGNIFICANT CHANGES TO PROJECT – WATER WITHDRAWAL SCHEDULE & MITIGATION PLAN (264)

**CATEGORY III RESPONSE:** These commenters claim that based on 9 VAC 25-210-110.4 and 9 VAC 25-210-185 “DEQ must deny a permit extension where there are changes in originally authorized activities or where the activity and its underlying conditions have become unattainable.” They aver that the extension will not be for the same activity and the underlying conditions of the activity have changed because (1) the conceptual mitigation plan includes properties that are not available for mitigation purposes and (2) significant changes have occurred pursuant to the project review undertaken by the VMRC and U.S. Army Corps of Engineers which alter the originally authorized activity. While DEQ agrees that a modification must be for the same activity as was initially authorized under 9 VAC 25-210-110.4 and 9 VAC 25-210-185, the agency does not agree that the regulations can be read to support denial of an extension based on a potential need to change the conceptual mitigation plan or activities by other state and federal agencies imposing conditions on the City in their permits. Specifically, DEQ interprets 9 VAC 25-210-110.4 and 9 VAC 25-210-185 to authorize the SWCB to extend the City’s permit as long as the impacts contemplated in the original permit are not modified in the extension. The City has not requested a change in the scope or location



of the impacts for the reservoir project; it has only requested an extension of time to submit a number of reports and plans. Upon submittal of a final mitigation plan, DEQ will evaluate whether the plan is sufficient to mitigate for proposed impacts in accordance with the conditions of the permit. As for the VMRC and Corps permits, while the City must comply with the most restrictive permit conditions, conditions imposed by those agencies are neither binding on the SWCB nor are otherwise required to be placed in the VWP permit.

CATEGORY IV COMMENT: DENY EXTENSION REQUEST – PERMIT INCONSISTENCIES AND IMPLICATIONS OF OTHER INFORMATION (12)

CATEGORY IV RESPONSE: The Corps and VMRC permits were issued after the DEQ permit and have some different and additional requirements. However, the conditions of the three permits are not contradictory, as indicated by the following:

- The permitted activity has not changed
- The permitted impacts have not changed
- The minimum instream flow (MIF) numbers in the Corps and DEQ permits are the same; VMRC does not have MIF conditions but has a moratorium period on pumping that has yet to be determined by study. Once determined the pumping moratorium would trump the monthly MIF numbers in DEQ and Corps permits for those months to the extent that they are more restrictive
- The pump size of 75 mgd is in Corps and DEQ permits, the VMRC permit does not contain the pump size
- The screen size for the pump is 1 mm in all permits
- The intake velocity in the permits is not contradictory; the DEQ permit says the velocity shall not be greater than 0.25 feet per second, the VMRC permit says the velocity shall be 0.08 fps which is more restrictive, but is also contained within the DEQ permit limit

There are often different conditions when multiple permits are issued, which usually happens for projects of this type, and the most stringent conditions always apply. Conditions imposed by other agencies are neither binding on the SWCB nor are otherwise required to be placed in the VWP permit.

CATEGORY V COMMENT: DENY EXTENSION REQUEST – VIABILITY OF THE PROJECT; ENVIRONMENTAL FACTORS AND IMPACT ON THE MATTAPONI RIVER; WETLAND AREAS & NATIVE AMERICANS (310)

CATEGORY V RESPONSE: This proposed action does not provide an opportunity to revisit the approval or denial of the reservoir. The Department of Environmental Quality has received a request from Newport News Waterworks to modify their existing VWP permit for the King William Reservoir project. The modifications would set document submittal deadlines and extend the effective date of the permit by five years (permit to expire in 2012 instead of 2007). They did not request, nor will they be granted, any other changes to their existing permit as part of the proposed modification. DEQ does not believe that the required studies can be completed and the reservoir constructed prior to the proposed expiration date of 2012. At that time, the City of Newport News will need to apply to DEQ to renew their permit, at which time the entire project will be reevaluated along with the results of these studies.

CATEGORY VI COMMENT: REVOKE THE PERMIT & DENY EXTENSION REQUEST – FUNDAMENTAL CHANGES AND MISREPRESENTATION OF MATERIAL FACTS (59)

CATEGORY VI RESPONSE: The permit issued by the Corps addressed these issues. DEQ and the SWCB cannot make any further determinations without the results of the requested reports. The extension request is for the same permit activities as permitted in the original permit – the construction and operation of the reservoir. The purpose of the extension is to get valid information on mitigation options and the feasibility of all sites under consideration and all project impacts prior to permit reapplication. The results of the studies that are the subject of the extension will be used to reevaluate the conditions upon reapplication as part of the DEQ review process; to do so in the absence of such information is not possible.

CATEGORY VII COMMENT: OPPOSED TO THE RESERVOIR PROJECT (17)

CATEGORY VII RESPONSE: This proposed action does not provide an opportunity to revisit the approval or denial of the reservoir. The Department of Environmental Quality has received a request from Newport News Waterworks to modify their existing VWP permit for the King William Reservoir project. The modifications would set document submittal deadlines and extend the effective date of the permit by five years (permit to

expire in 2012 instead of 2007). They did not request, nor will they be granted, any other changes to their existing permit as part of the proposed modification. DEQ does not believe that the required studies can be completed and the reservoir constructed prior to the proposed expiration date of 2012. At that time, the City of Newport News will need to apply to DEQ to renew their permit, at which time the entire project will be reevaluated along with the results of these studies.

CATEGORY VIII COMMENT: GENERAL COMMENTS (1)

CATEGORY VIII RESPONSE: Accepted comments/Acknowledged receipt of the comments.

---

## VWP PERMIT 93-0902 – EXTENSION REQUEST

### SUMMARY OF COMMENTS RECEIVED – Public Hearing Comment Period

Below is a brief summary of the comments received during the public comment period and the testimony given during the public hearing on VWP Permit 93-0902 – Extension Request. Comments have been divided into the following eight general categories: I) Support Extension Request; II) Deny Extension Request; III) Deny Extension Request – Changes to Project – Water Withdrawal Schedule & Mitigation Plan; IV) Deny Extension Request – Permit Inconsistencies & Implications of Other Information; V) Deny Extension Request – Viability of the Project and Impact on the Mattaponi River and Wetland Areas; VI) Revoke the Permit & Deny Extension Request – Fundamental Changes & Misrepresentation of Material Facts; VII) Opposed to the Reservoir Project; VIII) General Comments.

### CATEGORY I: SUPPORT EXTENSION REQUEST/SUPPORT RESERVOIR PROJECT

COMMENTER: Delegate Mamye E. BaCote, Ninety-Fifth District, Virginia House of Delegates

COMMENT: Regarding the Extension of the VWP Permit for the King William Reservoir project. The activities as defined in the existing permit have not changed, and the extension, as your staff advised, is a rational approach to give the City of Newport News the time that it needs to complete certain tasks, as required by the permit. This additional time is needed due to delays encountered with the U.S. Army Corps of Engineers construction permit. The extension will allow for adequate time for completion of required tasks, such as the wetland mitigation plan, and time to gather sufficient data from the ecological river monitoring study begun earlier this year. This information will be used in 2012 when the SWCB considers the renewal of the VWPP. The merits of the project, potential impacts, and its comprehensive mitigation program were fully considered by the Board in 1997 and will likely be issues again when the permit is renewed. At this time, it is essential for this decision-making body to focus on the factual basis and narrow nature of the extension request. I strongly urge the members of the SWCB to perform their appointed tasks in as reasoned and as appropriate manner as possible and issue the extension for this permit.

COMMENTER: John Carlock, Hampton Roads Planning District Commission

COMMENT: The Hampton Roads Planning District Commission first endorsed this project in 1994. The Commission, at its last meeting, reaffirmed its endorsement of the project and we urge you to move forward with granting the extension. It is important to get the studies done. This is a critical project to the economic vitality of the region.

COMMENTER: Bill Cunningham, P.E.

COMMENT: Support the granting of the requested permit extension. In reviewing the permitting process to date it appears that Newport News Water Works (NNWW) has and intends to go to great lengths to protect shad fisheries and mitigate/restore vital wetlands. In fact many of the delays to date have been due to NNWW addressing community and Corp of Engineers concerns. It is critical and reasonable for the Board to grant the request for a five-year extension for the King William Reservoir project. The reasons for this includes: it is consistent with normal practices and would allow NNWW adequate time for completion of the Wetland Mitigation Plan to facilitate the decision regarding permit renewal in 2012. An extension does not avoid a permit renewal, but schedules the renewal decision after completion of the required plans. Conversely, to decline the request would introduce even more delays in securing this vital resource for the future of our area. Urge the Board to focus on the narrow scope of this extension request and grant the request.

COMMENTER: Lamont Curtis

COMMENT: We do expect the population in the Newport News area to increase. Water is a very important component of that increase and to our development. The City is indebted to meet all of the requirements of the

Board. They have spent a lot of money. They have looked at this project with some of the finest technical and engineering minds in the country. I urge you to grant the extension.

COMMENTER: Jow S. Frank, Mayor, City of Newport News

COMMENT: Support the extension of the VWP permit for the King William reservoir project. I am here on behalf of the citizens of Newport News as well as the estimated 600,000 people of the Virginia Peninsula who will ultimately benefit from the drinking water provided by the King William reservoir project. We are here for a common-sense extension of the permit that was issued by the SWCB in 1997 and during the period of time since then, we have been unable to complete all of the tasks that we have agreed to do and were assigned to do through that permit process, because of delays in other permits along the way that were required. We now have all of those necessary permits in hand, and we are working hard to comply with all requirements of the SWCB permit. We need additional time to complete these things. Citizens of Virginia deserve to have all of the facts and the SWCB deserves to make its decision as to whether to renew this permit with all the studies that have been required and all of the pertinent facts at hand. The extension would allow us to complete the final wetlands mitigation plan and other important plans prior to a decision for renewal. The extension terms are consistent with other water supply projects that have been issued with 15-year permits and attempting to process a permit renewal in 2007 would be premature because all of the facts that are needed to make an informed decision will not have been in place. We were delayed seven years because of delays in other permitting processes. The extension is both fair and reasonable and significant in terms of creating the information necessary for the Board to reach an informed decision with regard to renewal, which we will be requesting at the appropriate time.

COMMENTER: Bruce Goodson, Chairman, James City County Board of Supervisors

COMMENT: Support the request for the extension of the permit for five years. This extension will give the Regional Wild Water Study Group, of which James City County is a member, time to complete studies required by this permit. The study group is committed to complete the reports and plans that have not been completed because of delays in other permitting processes.

COMMENTER: Ron Harris, Newport News Waterworks

COMMENT: We made a request for a modification or relief from this permit in October of 2003. We were instructed by DEQ to wait until we had all of our permits received, and within thirty days of receipt of those permits to then make an application for modification. In December of 2005, within thirty days of the issuance of the Corps permit, the City applied for these extensions. We have completed the thirty-day comment period that was associated with that application. The simple request is to extend the permit from its current expiration to 2012. The project is unchanged from our initial application. It still has the salient features, the physical features and attributes that it had in the current application of 1993, with intake pipelines from the Mattaponi River to the reservoir located on Cohoke Creek, with transfer facilities from the reservoir through a pipeline to Beaverdam Creek. This new application requires a final mitigation plan. We have a concept plan that has been approved by the Corps. We have begun the comprehensive monitoring needed for the development of the final mitigation plan. We remain in compliance with the permit conditions and the project is proceeding. The extension is both fair and consistent. The extension is fair because we have had over six years, almost seven years of delay that were beyond the City's control. In 1997 we received a routine water protection permit, in 2004 we received our Virginia Resources permit from VMRC and we received our Corps permit in 2005. All these permits were issued generally in conjunction with the Joint Permit Application that was submitted in 1993. We are seeking to recover five years out of the seven years that have been lost due to these permit options. Our request is consistent with your regulations and policies. Approximately 15 Virginia Water Protection permits have been issued for the full 15-year term. Delaying the decision for five years upon renewing our permit will offer DEQ, Virginia citizens and project stakeholders the benefits of having all of the plans and studies conducted through completion before making a final decision on renewal of the permit.

COMMENTER: Gordon Helsel, Mayor, City of Poquoson

COMMENT: Support the extension request. The City of Newport News and other local water utilities have worked diligently for 18 years to secure additional water supplies for all of the Peninsula communities including Poquoson. The City of Newport News, as advised by DEQ, is requesting the extension in order to complete studies and plans originally required by the 1997 Virginia Water Protection Permit that could not be completed due to the delays in the federal construction permit. The permit activities, as defined in the permit, are unchanged and therefore the extension is an appropriate request. The City of Newport News was able to

promptly begin needed actions, such as the establishment of the ecological monitoring work on the Mattaponi River once the federal permit was granted late in 2005. Having the additional five years will enable them to complete this work in time for the permit renewal in 2012. Ask that DEQ grant this extension to allow additional time for the City of Newport News to complete the permit requirements and prevent further, unnecessary delays so that the work for this needed project can continue toward its completion.

COMMENTER: Chris Henderson

COMMENT: In support of the reservoir. The system is broken. We need to develop a better way to evaluate these projects in a timelier manner to make sure that we provide for the long-term needs of the citizens of the Commonwealth. I am most thankful for our forefathers who had the foresight to provide for the water that I currently enjoy. I think that there was a lot of planning that went into that. This is part of that continuing process. We don't know everything today that we are going to know five years from now. We learn more and more every day about the environment, about the impacts of certain procedures and processes on the wildlife and on our waterways, and I think this time will allow us to use the best science to evaluate the merits of the project. I encourage you to allow the City this opportunity to use the best science available to establish the merits of the project and once the merits are established to allow it to proceed or not in a timely manner.

COMMENTER: Bob Hershberger, EVP of the Greater Williamsburg Chamber & Tourism Alliance

COMMENT: Providing a five-year extension to the Virginia Water Protection Permit issued in 1998 for the King William Reservoir is a logical, common-sense step for your department to make. It's consistent with other water supply projects that have been issued 15-year permits, and enable the City of Newport News to complete the final Wetland Mitigation Plan and other important plans necessary to provide your department the best possible information prior to any decision on the permit's renewal. There have been many delays throughout the lifespan of this project – many of which were beyond the control of those working to implement it. This extension request makes good sense because of the extra time it gives to develop sound plans to make intelligent, informed decisions about the project.

COMMENTER: Randy Hildebrandt, City Manager, City of Newport News

COMMENT: Implementation of the King William Reservoir project is now well underway. The current priorities are to resume acquisition of property needed for the project and work to fulfill conditions of the permits from DEQ, VMRC and the Corps. While much time has passed since the initial SWCB permit decision for this project, it is important to remember that we could not move forward in meeting all the conditions until these other two permits had been obtained. Only in the last eight months have we been able to synthesize the various special conditions into a single approach to ensure that each permit's own unique conditions can be met while not affecting the conditions prescribed by the other permits. Within thirty days of receiving the Corps permit, we contacted DEQ staff to discuss how we could best handle the fact that a VWP permit was rapidly approaching the time for renewal. It was agreed that a five-year extension of our existing permit would be the most practical and logical way to proceed. The five-year extension will allow us to complete the essential work products before a permit renewal must be considered by the Board in 2012. I ask that the Board support our request for a five-year extension to the King William Reservoir project VWP permit.

COMMENTER: Ross A. Kearney, II, Mayor, City of Hampton

COMMENT: Concerned about our future water supply and appreciate the long-term efforts of the City of Newport News and other local water utilities to secure those supplies to the Virginia Peninsula. Request that DEQ and the SWCB extend the VWP permit for the King William Reservoir. The City of Newport News, as advised by DEQ, is requesting the extension in order to complete studies and plans originally required by the 1997 VWP permit that could not be completed due to delays in the federal construction permit. The permit activities, as defined in the permit, are unchanged and the extension is an appropriate action. Once the federal permit was granted late in 2005, the City of Newport News was able to promptly begin needed actions, such as the establishment of the ecological monitoring work on the Mattaponi River. Having the additional five years will enable them to complete this work in time for the permit's renewal in 2012. Ask that DEQ grant the City of Newport News the additional five years to complete these requirements since a 15-year VWPP for reservoir projects is now the norm. An extension of this permit would prevent further, unnecessary delays and allow the work for this needed project to continue toward its ultimate completion.

COMMENTER: Michael Kelly, Williamsburg Environmental Group



COMMENT: Our firm has recently been retained by Newport News to work on the wetlands mitigation design for the King William Reservoir project. With over 800 acres of wetlands mitigation, it is going to take some time to do all of the necessary studies and the detailed design work to be able to meet the approval of not only DEQ but all the agencies involved in the Interagency Mitigation Team. There is quite a lot of work involved in the design work. We have over 13 sites that we are going to have to take a look at, get on the sites and do the detailed work. Given the timeframe that the current permit has, to December of 2007, it would be infeasible to expect us to get all of the work done and to get it approved by the various agencies. We support the extension request.

COMMENTER: Dave Lamoureux

COMMENT: Support the five-year extension on the Virginia Water Protection Permit for the King William Reservoir. The extension is consistent with the State's current policy that water supply projects now receive 15-year permits from VDEQ. The 5-year extension would allow adequate time for required tasks to ensure that the most appropriate decisions can be made.

COMMENTER: Andy Landrum

COMMENT: Grateful for the leaders that we had and the engineers fifty years ago that developed the water supply that we enjoy today. Also equally grateful for the leaders today who are trying to provide for our children and for our children's children. In favor of the SWCB granting the City the requested extension to the permit application process. It comes down basically to a sense of fairness and common sense. The City has acted in good faith. They have been through, any hurdles for many years for many agencies, federal and state, and they have done everything that they have been asked to do. It has taken a long time to get through that process. There is really not enough time left of the original permit in order for them to complete the work that they have in good faith trying to get done. They need this five-year extension in order to get their work finished.

COMMENTER: Terry V. Legg, P.E., M.ASCE

COMMENT: The City of Newport News, on behalf of all the communities on the Lower Virginia Peninsula, has requested a five-year extension on the Virginia Water Protection Permit for the King William Reservoir. This action is consistent with the instructions given to them by the Virginia DEQ in 2003. The request for extension is also consistent with the current regulations regarding permit extension. It is critical that the members of the SWCB and DEQ focus on the merits of the City's request for this extension. The merits of the project, its potential impacts and its comprehensive mitigation program were fully considered by the Board in 1997 when this permit was issued. At this time it is essential for this decision-making body to focus on the factual basis and narrow scope of the extension request. Please consider the following: 1) the extension is necessary based on the time required to complete the Wetland Mitigation Plan and other plans and tasks that DEQ incorporated by condition into this permit. 2) The extension is consistent with the State's current policy that water supply projects now receive 15-year permits from VDEQ. 3) The 5-year extension allows for adequate time for completion of these required tasks so that the best possible decision regarding permit renewal can be made at the end of the extension period in 2012. 4) Delays in project implementation of up to 6 years were beyond the control of the City due to delays in issuance of the Corps of Engineers permit. Urge the SWCB to issue the requested extension for this permit.

COMMENTER: James McReynolds, County Administrator, York County

COMMENT: Newport News Waterworks' request is reasonable and prudent, and I would ask that you grant the extension to allow them the time to gather the facts that make the studies so necessary to make the right decision.

COMMENTER: David L. Morris, II, AICP, Natural Resources Manager, Newport News Waterworks

COMMENT: The Daily Press and the Virginian Pilot are the newspapers of record for the estimated 1.6 million people who call Hampton Roads home. The Editorial Page of the newspaper quite often serves as an unofficial conscience of the community. Regarding the King William Reservoir Project, both newspapers have maintained their steadfast support over the years. Both papers have written in support of our request for a five-year extension of the current VWP permit. These newspapers know that the combination of the Lake Gaston Pipeline and the King William Reservoir will meet our region's water supply needs during the years to come. Such advance planning is essential in an area like Hampton Roads that historically has experienced dramatic periods of growth that require resources to be in place when needed. During the recent public hearing on this extension request, it seemed that few speaking in opposition really addressed the essence of the proposed permit

modification, choosing instead to bring up issues that have been addressed time and time again. This project has withstood every test that has been conceived, by both regulators and the public. The project as now permitted took seventeen years from initial scoping until the final permit from the Corps was granted on November 15, 2005. For six years, the VWPP was essentially held in abeyance while the permitting process for the federal permit was halted, reviewed, restarted and finally completed. The five-year extension will allow for the work that had been planned during those six years of abeyance to be completed prior to the required application for permit renewal. The effort being made to secure a supplemental water supply is not discretionary on our part. The VA Department of Health has presented formal notification to Newport News and our water providing partners, James City County and the City of Williamsburg on more than one occasion that we must implement plans to supplement our supplies. When completed in 2018, this project will have taken thirty years from concept to completion, which makes our fifty-year planning horizon a vitally important part of the process. I urge you to grant the five-year extension, together with the amended due dates for the various reports and plans that were stipulated in the original 1997 VWPP.

COMMENTER: Delegate Glenn Oder of Newport News

COMMENT: Support the extension request. What we have before us is a situation where timing has affected the ability to complete the studies on this project, and I hope that you will vote to extend the permit. Reasonable people have disagreed with the project as it has gone on, but the issue before us is the extension.

COMMENTER: Paul E. Peterson, Senior Associate, Malcolm Pirnie, Inc.

COMMENT: Support Newport News' request for a 5-year extension of its VWP permit for the King William Reservoir project. Current population estimates show that the population of the Lower Peninsula is growing. At least 35 different water supply alternatives of all varieties and range of capacities are documented in the Corps of Engineers' EIS for the project. The ecomonitoring program is well underway. The Final Ecological Monitoring Plan (or Protocol Document) was submitted to DEQ on May 26, 2006. The vast majority of the extensive data being collected through the ecomonitoring program will be available before a DEQ permit renewal decisions if the permit is extended for 5 years. These data will be valuable to decision-makers in understanding baseline environmental conditions and, where necessary, fine-tuning Project operating rules. By the end of 2012, fully 7 years of ecological monitoring data and annual reports will be available to regulatory agencies for consideration. Both logical and precedent exist for granting Newport News a 15-year term from the date of the original DEQ approval.

COMMENTER: Donald P. Rice, AICP, Water Resources Engineer, Newport News Waterworks

COMMENT: Speaking to the contention that the permit activities have changed for the King William Reservoir project: The permitted activity, as stated in the description provided in the permit, reads: "The construction and operation of a water supply intake on the Mattaponi River, a dam and reservoir (King William Reservoir) on Cohoke Creek, a pipeline from the intake on the Mattaponi River to King William Reservoir and a pump station and pipeline from the King William Reservoir to the headwaters of Beaverdam Creek in New Kent County and the transfer of water from the Mattaponi River to King Williams Reservoir to Beaverdam Creek and Diascund Creek Reservoir." These activities have not changed. What opponents are attempting to characterize as a change in the activity is nothing but a change in circumstances, like many other circumstances such as seasonal demand, equipment problems, or changes in the weather. General Condition K allows the activity to be modified – without modifying the permit – when the applicant can "demonstrate in a written statement to the Department that said modification will not violate any conditions of this permit." The permit also states very clearly (in General Condition K): "This permit may be modified when any of the following developments occur...4. When it becomes necessary to change final dates in schedules due to circumstances over which the permittee has little or no control such as acts of God, materials shortages, etc." The Board's original decision was properly made, and it was upheld by the highest court in the Commonwealth. The permitted activity has not changed, the need for an extension was acknowledged by DEQ itself, and the events that made the extension necessary were beyond the applicant's control. Urge approval of the extension request.

COMMENTER: Sandy Robinson, Vice President, Malcolm Pirnie, Inc.

COMMENT: I would appreciate the opportunity to address the SWCB on September 6<sup>th</sup>, or whenever the discussion regarding the extension of the permit for the King William Reservoir project may be scheduled to take place, as may be necessary and permissible. I am very much aware of the facts behind the water needs of the applicant and its regional partners, the importance of the study data and the time that is required for it's



compilation to be meaningful, the desire by the regulatory agencies, particularly EPA, that the Peninsula's water issues be settled through regional cooperative efforts, and the relevant costs and applicable technologies of alternative solutions.

COMMENTER: James E. Ryan, Jr., Troutman Sanders, LLP, Representing the City of Newport News

COMMENT: This permit was issued in 1997. It had a ten-year term, which was the maximum length that was allowed by the regulation at that time. The regulation has since changed to allow 15-year terms for projects like this one that requires a great deal of time to develop. That is what we are asking for. Under the regulation, if the project has not changed, the applicant is entitled to ask for and should get an extension of the term to complete the project. Since 1997, we have been continuously engaged in trying to get the other permits that are required for this project, and the studies that are required by this permit have been planned and are underway and cannot be completed before the end of the ten-year term. We are asking for an extension to the maximum time allowed under the current regulations, up to 15 years, to complete those studies, so that the Board will have all of that information before it when it considers renewal of the permit.

Comments submitted on behalf of the City of Newport News regarding the extension of VWP permit No. 93-0902 for the King William Reservoir. (A very lengthy and detailed document was submitted by Troutman Sanders, LLP in response to questions and issues raised in public comments received during this period. A lengthy set of attachments was also provided as background information. A brief summary of those comments dealing with the Permit Extension is included below.) The Permit to build and operate the King William Reservoir was issued on December 22, 1997, was modified on December 27, 2002, and will expire, unless its term is extended, on December 22, 2007. The Permit requires the City to prepare and submit a number of studies and plans during the current term of the Permit. However, due to the overlap of these studies and plans with similar requirements of other permitting agencies, whose permit processes ran much longer than expected, this has not been possible. Accordingly, the City made application on December 13, 2005, for an extension of the Permit's term to December 22, 2012, and new deadlines for completion of the studies and plans. Recent permit activities include: the final VMRC permit on November 30, 2004; DEQ's conditional CZMA concurrence on December 27, 2004; and the Corps final, executed § 404 Permit on November 16, 2005. The Corps § 404 permit is based on the express finding that the Lower Virginia Peninsula needs the water that this project will produce and that the project is the "least environmentally damaging, practicable alternative" to meet that need. On November 4, 2005, the Supreme Court of Virginia rejected all challenges presented by the Chesapeake Bay Foundation, the Mattaponi Indian Tribe and others to the validity of the VWP Permit. The delays in securing those other permits and approvals, and defending the Permit in the courts, were circumstances over which the City had no control. One of the major items referenced in the public comments has been a statement that "the activities authorized by the permit are no longer the same as those upon which DEQ authorized the permit in 1997 and therefore, the City is not eligible for extension of permit". I would like to address that contention. When the Permit was issued in 1997, the Virginia Water Protection Permit Regulation provided that the duration, or term, of such permits could not be longer than ten years. Since then, that Regulation has been modified to allow fifteen year permit terms, and the SWCB has reportedly issued fifteen or so new VWP permits for water projects with fifteen year terms since that change. The City's request for an extension of the Permit term is authorized by 9 VA ADMIN. CODE § 25-210-185, which provides that a request for extension can be requested if there are no changes in the activity authorized by the VWP Permit. The activity authorized by the Permit is stated on the face of the Permit:

Activity Description: The construction and operation of a water supply intake on the Mattaponi River, a dam and reservoir (King William Reservoir) on Cohoke Creek, a pipeline from the intake on the Mattaponi River to King William Reservoir and a pump station and pipeline from the King William Reservoir to the headwaters of Beaverdam Creek in New Kent County and the transfer of water from the Mattaponi River to King William Reservoir to Beaverdam Creek and Diascund Creek Reservoir.

Activity Locations: Intake at Scotland Landing on the Mattaponi River and dam and reservoir (King William Reservoir) on Cohoke Creek South of Route 626 in King William County and pipelines from Scotland Landing to the reservoir and from the reservoir to the headwaters of Beaverdam Creek in New Kent County.

The activity authorized by the VWP Permit is the construction and operation of the intake, dam and reservoir, and associated pumping stations and pipelines within the parameters stated in the Permit. These facilities have not changed since issuance of the Permit in 1997. In regard to the "pumping hiatus" condition in the VMRC

permit, a hiatus of the projected 44 to 83 days in any year will not prevent the Project from meeting its water yield requirements and, in any event, this pumping hiatus does not apply in any year when a drought emergency has been declared. Therefore, there will be no need to change the minimum instream flowby conditions in the VWP Permit as a result of the VMRC permit. It has also been suggested that the activity authorized by the VWP permit has changed because certain wetland mitigation sites previously identified as possible components of a final mitigation plan are no longer available. The Permit condition does not specify mitigation sites; rather, it requires the City to successfully restore and/or create the specified number of acres of freshwater wetlands. The activity authorized by the VWP Permit has not changed and, under applicable regulations, the City's request for an extension of the term of the permit and plan submission deadlines can and should be granted. This extension will allow these plans to be completed and data and conclusions assessed before the SWCB must make a decision on permit renewal in 2012. The City asks that the term of VWP Permit No. 93-0902 be extended until December 22, 2012, and that the deadlines for submission of plans and documents required by that Permit be extended as requested. The City respectfully requests the opportunity to address the SWCB when this extension request is heard.

COMMENTER: Bruce W. Schwenneker, PhD, Vice President, Malcolm Pirnie, Inc.

COMMENT: The King William project is a product of considerable thought, planning, and environmental planning. The studies undertaken to evaluate the project have discussed the environmental effects of the project at length and have all concluded that the benefits of the project far outweigh any environmental impacts. The result of this planning has culminated in approvals from the DEQ, VMRC and the US Army Corps of Engineers. This project has additional benefits that perhaps have not been given due consideration. These benefits result from the reduction of urban sprawl and reduction of associated secondary impacts from project implementation. This project and needed water for growth will allow the core City and County population centers to expand in a controlled manner. Without this resource, the population will continue to expand. However, this expansion will take place in rural areas where homeowners can sink individual wells at will to obtain their water. Many Counties have seen this sprawl occur and now require large lot subdivisions (greater than 5-acre lots) to limit total population and ease burdens on traffic and schools. However, these large lots mean that the population spreads out over an even larger area creating problems with forest fragmentation, runoff, wetland and endangered species impacts. In order for smart growth and planning to work, Counties need to limit growth and density in the rural areas as they are starting to do, however, we must also have adequate utilities and infrastructure including a water supply to support the anticipated growth in our Cities and population centers. Without it the sprawl and tremendous impacts to the environment are inevitable. Please provide the extension to the VWPP requested so that the project implementation can continue.

COMMENTER: Representative Robert C. "Bobby" Scott, Congress of the United States, 3<sup>rd</sup> District, Virginia

COMMENT: Regarding the request by the City of Newport News for modification of the Virginia Water Protection Permit Number 93-0902 for the King William Reservoir. I believe that this water supply project is necessary not only for the City of Newport News but for the entire Virginia Peninsula to meet its water needs through 2050 and beyond. I understand that the State's current practice is to grant 15-year permits for water supply projects; therefore this five-year extension is consistent with the Board's policy. Your decision will obviously need to take into account any applicable rules, regulations, statutes and case law, but I hope that as you consider your decision, you consider the following factors: 1) The extension will enable continuation of the work, begun since the Corps permit was issued, involving the ecological monitoring on the Mattaponi River and development of a detailed wetland mitigation plan, both of which are essential elements of both the State and federal permits. 2) The extension will allow sufficient time for completion of other studies that are important to an eventual decision regarding the State permit renewal.

COMMENTER: Henry H. Stephens, Associated Developers, Inc.

COMMENT: Strong support for the extension of the Newport News Waterworks' VWP permit for withdrawal of water from the Mattaponi River. Development of the King William Reservoir is critical to our region. There is no doubt the water will be needed to sustain the region. All other alternatives have impacts the U.S. Army Corps of Engineers deem to be greater than any impacts from the development of the reservoir. The extension will allow Newport News Waterworks to continue plans and studies which may identify ways to further minimize any impacts of this much needed regional water supply. Nothing has changed since the original permit was issued except we are much closer to the day this vital water source will need to be tapped.

COMMENTS: Kerry St. John

COMMENT: Request that the Board extend the permit so that the necessary studies and design work that was postponed due to permitting delays that were beyond the City's control can be completed.

COMMENTS: Kathryn B. Sweeney, PWS, Project Environmental Scientist, Malcolm Pirnie, Inc.

COMMENT: Support the King William Reservoir Project. The King William Reservoir project is the cornerstone of a strategy to provide an adequate drinking water supply for all the residents of the Lower Peninsula. I support the project because: 1) the project is needed. 2) The King William Reservoir, along with conservation measures and utilization of limited groundwater supplies, is the least environmentally damaging practicable alternative to meet the long-term water supply needs of the Lower Virginia Peninsula. 3) The reservoir mitigation plan, when successfully implemented, will exceed the goal of compensating for the loss of wetland acreage and function, and will also provide mitigation for other potential environmental impacts resulting from the project. 4) The RRWSG has committed to an unprecedented 20-year monitoring period for the mitigation sites demonstrating their commitment to successful mitigation implementation. The reservoir mitigation plan represents the culmination of a lengthy, complicated process in which numerous federal and state agency representatives and wetland mitigation experts provided detailed analysis and review at virtually every step of its formation. The King William Reservoir is a needed regional water supply project and one that is environmentally sensitive in its design. The project represents the common sense solution to the region's long-term water needs.

COMMENTS: Dixon Tucker

COMMENT: The Virginia Department of Health has identified the need for more source water in this region. Support the extension request.

COMMENTS: Clarence Warnstaff, Water Programs Consultant, Michael Baker Jr., Inc.

COMMENT: Urge the SWCB to grant the City of Newport News' request for a 5-year extension of the VWP permit for the King William Reservoir project. Public tap water begins as a water supply such as the King William Reservoir. Without an adequate and dependable supply of water, tap water is not possible. The City of Newport News has worked tirelessly to bring forth a water supply project that is adequate and dependable and in full compliance with both State and Federal regulatory requirements. The King William Reservoir project is absolutely needed, it has regional and broad community support and has met and exceeded all Federal and State regulatory requirements. Therefore it is essential that the members of the Virginia SWCB and DEQ focus on the merits of the City's request for an extension: 1) The extension is necessary based on the time required to complete the Wetland Mitigation Plan and other plans and tasks that DEQ incorporated by condition into the Newport News permit. 2) The extension is consistent with the State's current policy that water supply projects now receive 15-year permits from VDEQ. 3) The 5-year extension allows for adequate time for completion of DEQ required tasks so that the best possible decision regarding permit renewal can be made at the end of the extension period in 2012. 4) Delays in project implementation of up to 6 years were beyond the control of the City due to delays in issuance of the Corps of Engineers' permit. These unavoidable delays make this permit an ideal candidate for permit extension. Urge the members of the SWCB to issue the extension for the Newport News permit.

COMMENTS: Senator Martin E. Williams, 1<sup>st</sup> Senatorial District, Virginia

COMMENT: The City of Newport News has requested a five-year extension on the Virginia Water Protection Permit for the King William Reservoir. This request is reasonable when understanding that it was not possible for the applicant to fulfill all VWPP requirements until after all permit approvals and requirements were received and a logical plan for satisfying all project conditions was created. The plan for compliance is now in place and studies, designed to capture the information to make an informed decisions about the project merits, are underway. I know that this water supply project must be constructed for the Virginia Peninsula to meet its water needs through 2050 and beyond, that it embraces the desire by all regulatory agencies that we solve water supply shortages through regional efforts, and that we select the solution that is least environmentally damaging. I encourage the SWCB to grant this five-year extension because: 1) The extension enables continuation of the work, begun since the Corps permit is issued, involving the ecological monitoring on the Mattaponi River and development of a detailed wetland mitigation plan, both of which are essential elements of both the State and federal permits. 2) The extension allows sufficient time for completion of other studies that are important to an eventual decision regarding the State permit renewal. Your decision must be based on what is the most

appropriate way to ensure that the SWCB will have the necessary information in the renewal process to judge whether the City, as the permit applicant, has successfully met the environmental requirements that are important to the State. Since the State's current practice is to grant 15-year permits for water supply projects, this five-year extension is not only a logical way to proceed, but is consistent with the Board policy.

COMMENTER: Robert G. Williams

COMMENT: Urge support of the extension request. It is important to remember that the King William reservoir is a project developed in response to a state requirement to expand the Peninsula's water supply as a matter of public health. It is a project with all of its permits in hand that has complied with all regulatory requirements in seeking its permits, and often has exceeded them. It is a project that, in terms of the original permit application submitted to DEQ in 1993, is unchanged. When considering the requested extension for the VWP permit, it is essential that the SWCB bases its decision on these facts, and that this extension is a reasonable and appropriate action. It will enable the City of Newport News to continue toward construction of a 1,500 acre lake with buffers of natural green space with appropriately preserved or recreated wetlands, additional open water wetlands, appropriate cultural and historical protection and appropriate protection to the Mattaponi River and its plant and aquatic life. Please help localities do the job that you require of them in the first place by basing permit decisions on sound science and facts. Please grant this permit extension request.

COMMENTER: Joseph Witt, Chairman, Virginia Peninsula Chamber of Commerce

COMMENT: Recommend approval of the request for extension of this permit. We are not talking about the worthiness of the project tonight, but whether we should be collecting all of the facts and having extra time to collect those facts. The VA Peninsula Chamber of Commerce fully believes that we need that extra time to collect all the facts. Any delays would not be in the best interest of this region or of Virginia. The water supply project has experienced many delays and adding to these delays could have a long-term impact on our region and the quality of our communities. A long-term water solution is vital, and an extension of this permit will help ensure the solution is successfully implemented.

COMMENTER: Walter Zaremba, Chairman, York County Board of Supervisors

COMMENT: Support the request for the extension of this permit process. The City has made a common-sense request for extension of its permit. The request was made in consultation with the State and was identified as a solution to delays in project implementation that were beyond its control. The extension term is consistent with other water supply projects that have been issued 15-year permits. The City has made a good faith effort to resume implementation efforts since issuance of the Corps permit last November. The extension will allow the City to complete the final Wetland Mitigation Plan and other important plans prior to the decision of renewal. The extension will facilitate the situation for the best possible decision regarding renewal to be made.

COMMENTER: Jeanne Zeidler, Mayor, City of Williamsburg & Chair, Hampton Roads Planning District Commission

COMMENT: Representing the City of Williamsburg: This project is important to the future of the City of Williamsburg as well as the Virginia Peninsula. The applicant, which is the City of Newport News, is working within the framework of what they have been instructed to do by DEQ. They are requesting time to complete studies and plans originally required by the 1997 VWP permit, that were delayed due to delays in the Federal Construction Permit. Once the Federal permit was granted in late 2005, the City was able to promptly begin needed action, such as the establishment of the ecological monitoring work on the Mattaponi River, and the imminent granting of a contract to complete the wetlands mitigation work. It is appropriate for DEQ to grant this extension so that the City has the additional five years to now complete these requirements. Urge you to grant this extension and prevent further delays so that the work for this project can continue to its ultimate completion. Representing the Hampton Roads Planning District Commission: The Hampton Roads Planning District Commission has reviewed the request by the City of Newport News that the Virginia Water Protection Permit for the King William Reservoir Project be extended. At its Quarterly Commission Meeting on July 19, 2006, the HRPDC reaffirmed its long-standing support for this project. The Hampton Roads Planning District Commission urges the SWCB to extend the life of the VWP Permit, No. 93-0902, originally issued by the SWCB in 1998, for five years through 2013 in accordance with the request of the City of Newport News.

COMMENTER(S): (8) Scott A. Bailey; Meghan Smith Kramer; Britt McMillian; Joann Michalski; Joel Petery; Scott Phillips, P.E.; Jonathan C. Pollard, P.E.; Stephanie L. Spalding, P.E.



COMMENT: This action is consistent with the instructions given the City of Newport News by DEQ in 2003. The request for extension is also consistent with your current regulations regarding permit extensions. It is critical that the members of the SWCB and DEQ appropriately focus on the merits of the City's simple request for extension. The merits of the project, its potential impacts and its comprehensive mitigation program were fully considered by the Board in 1997 when this permit was issued. At this time it is essential for this decision-making body to focus on the factual basis and narrow scope of the extension request. Please consider the following: 1) the extension is necessary based on the time required to complete the Wetland Mitigation Plan and other plans and tasks that DEQ incorporated by condition into this permit; 2) the extension is consistent with the State's current policy that water supply projects now receive 15-year permits from VDEQ; 3) the 5-year extension allows for adequate time for completion of these required tasks so that the best possible decision regarding permit renewal can be made at the end of the extension period in 2012; and, 4) delays in project implementation of up to 6 years were beyond the control of the City due to delays in the issuance of the Corps' permit. Urge the members of the SWCB to perform their appointed task in a reasonable manner, and issue the extension for this permit.

COMMENTER(S): (3): Sharyn L. Fox, CPC, FOX Consulting Services, J. David Glass, P.E.; Doug Haller

COMMENT: This is a simple request for an extension. The merits of the project, potential impacts and its comprehensive mitigation program were fully considered by the Board in 1997. Since that time, the project has become even more environmentally protective. It is essential for this decision-making body to focus on the factual basis and narrow nature of the extension request. Please consider the following: the extension is common-sense since it is a solution to delays in project implementation that were beyond the City's control during the delay for the Corps permit; the extension is consistent, since the state's current policy allows water supply projects to now receive 15-year permits from VDEQ; the extension provides continuation, since the project received its "go-ahead" with the federal permit last year, work needs to be continued on ecological monitoring on the Mattaponi River, land acquisition, and wetland mitigation; and the extension allows for completion, since all the studies underway will be completed or nearly completed and will provide valuable data and information so that the best possible decision regarding permit renewal can be made at the end of the extension period in 2012. I urge the members of the SWCB to issue the extension for this permit and in doing so allow the Peninsula, as a unified region, to provide water for our future generations.

#### CATEGORY II: DENY EXTENSION REQUEST

COMMENTER: Elizabeth Christeller

COMMENT: Newport News needs to demonstrate that they will be able to pump 42 mgd from the King William Reservoir before spending any more tax money on this project. I favor a full review of the permit in 2007. I understand that Newport News feels that they will not have adequate information at that time but there is no reason to continue if the project will not provide the city with its stated water needs due to limits on withdraws imposed by the SWCB.

COMMENTER: Tim Gabbert

COMMENT: The Mattaponi Reservoir permit extension is a simple process gone sour. Deny the permit extension and let the permitting process begin anew.

COMMENTER: Stephen Greenwood

COMMENT: Suggested that the money could be better spent developing desalinization plants to supply the regional water needs. There are already six reservoirs in or around Newport News, none of which are being used or being kept up properly. A common sense solution might be to use the existing Newport News City reservoir and to provide desalinization plants to supply the additional fresh water needed. Oppose the SWCB granting Newport News' request for an extension for their Water Protection Permit.

COMMENTER: Sara Lewis, Outreach Communications

COMMENT: Please deny the extension of the Virginia Water Protection Permit that was granted to Newport News in 1997. The extension of the permit for 5 more years will allow Newport News to move forward with land acquisition and public relations activities that will make it more and more difficult to stop the construction of a reservoir that is not needed to provide drinking water to the citizens of Newport News. A full review of the project is needed in 2007. Deny Newport News' request for more time to conduct studies that will probably add little or no useful information. The science that says the Reservoir is unnecessary and harmful is abundant and irrefutable.

COMMENTER: Phillip Rose

COMMENT: Opposed to the reservoir permit extension because the potential for the great loss of animal habitat. Especially the loss of Bald Eagle habitat.

COMMENTER: Joe Schumacher, Representing Congresswoman Jo Ann Davis

COMMENT: The City of Newport News would like a five-year extension to its VWP permit to enable it to complete several ecological plans and to conduct various studies. The topics of these studies involve plans for drought water conservation, salinity monitoring, wetlands mitigation, and ecological monitoring. I believe that these studies should be carried out prior to the granting of an extension. I respectfully request that the SWCB and DEQ fully evaluate the impacts from the proposed reservoir prior to a five-year extension. I formally request that the five-year extension be denied this year.

COMMENTER: Walter Zadan

COMMENT: I attended the hearing in Williamsburg last night and was impressed with the presentations offered. My belief is that the proponents are seeking to delay the permit process for their own purposes rather than on merit. I oppose the permit extension.

COMMENTER(S): (7) Virginia Calls; Henry & Molly Gregory; Larry A. King; Sharon Hill; Susan R. Luck; Catherine Lynn

COMMENT: Oppose the renewal of the permit.

COMMENTER(S): (4): Richard Wayne Carlton; Robert Winston Carlton; Ryan Webb Carlton; Zady Edwards Carlton

COMMENT: Against this extension because they had had ten years to do the required studies. It fell in the guidelines of the law at that time. Just because they didn't get their permits when they wanted to, that is beside the point. They knew these studies had to be done. They should have started 20 years ago and then all they had to do now was just kind of an update. We ask the SWCB to deny this extension. Please do something about the Eminent Domain issue. The constitution was written to protect people who own property from having the government from taking it. The Mattaponi is ok, but it's narrow and much too crowded. The Pamunkey at present is one of the few rivers that left that is owned by a few in large tracts and I fear that's to end too. We invite you to come down and see that they will be destroying if this reservoir is built.

COMMENTER(S): (3) Ernie Braganza; Gary Rouse; David Seivers

COMMENT: Urge not to extend the water protection permit for the King William Reservoir; rather, carefully review the reservoir project when it comes up for renewal in 2007. Extending the permit at this point would not allow fair consideration of the project for many years.

COMMENTER(S): (2) Inez Croft Mihalcoe; Page Lawback Warden

COMMENT: To disregard a treaty our ancestors made for peace is not acceptable. Suggest the use of desalinization to meet our water needs. Do not agree with extending this permit.

CATEGORY III: DENY EXTENSION REQUEST – SIGNIFICANT CHANGES TO PROJECT – WATER WITHDRAWAL SCHEDULE & MITIGATION PLAN

COMMENTER: Glen Besa, Regional Director, Sierra Club – Virginia Chapter

COMMENT: Oppose the proposed 5-year extension sought by Newport News for the King William Reservoir project permit. Significant changes in the project require the SWCB to deny this extension. If the SWCB were to grant this extension, it would foreclose a comprehensive review of this reservoir project which would reveal serious problems with the project as it is now proposed. Major changes to the project and other problems with this project include: 1) major changes in the water withdrawal schedule; 2) the public, King William County, New Kent and members of the Raw Water Study Group have a right to know what the safe yield of this reservoir will be under the withdraw restrictions currently imposed; 3) the Ecological Monitoring Plan – a key study will still not be completed in 2012 (a critical data source to assess the parameters of the withdrawal hiatus imposed by the VMRC); 4) inadequacy of the Wetlands Mitigation Plan (loss of two major land parcels previously identified as mitigation sites); 5) beneficial uses of the reservoir as a recreational resource (changes in the water withdrawal schedule not only impact the safe yield of the project, but may seriously impair the recreational uses of the reservoir). The major changes in the withdrawal schedule for this project compel the SWCB to require Newport News to reassess the beneficial value of the reservoir for recreation. The Sierra Club urges the SWCB to deny this five-year extension requested by Newport News.

COMMENTER: Virginia P. Cowles

COMMENT: Virginia Water Protection Permit No. 93-0902 should not be extended. Newport News has had nine years to study its King William reservoir project and to put a mitigation plan in place. Instead of completing impact studies before applying for a VWP permit, the city won a permit first, based on promises to meet conditions which it has not met. Newport News stated in its coastal management compliance report that it held numerous hearings to meet the requirement of dealing with the concerns of affected residents. It has held numerous hearings, but it has not heard, much less dealt with the residents' concerns. Newport News should not be granted an extension of the VWP permit. It has not taken seriously the conditions attached to its permits. It now claims that its project is essentially the same, although the VMRC permit does not allow withdrawal of water from the Mattaponi during the shad run. The city is asking for a 1,526 acre public water storage impoundment on Cohoke Creek that might not fill up, for water it does not need, on a site held sacred by the Mattaponi tribe that will result in the largest destruction of wetlands since the passage of the Clean Water Act. An extension of VWP No. 93-0902 is of questionable legality, and the extension should be denied.

COMMENTER: Kitty Cox

COMMENT: Actively opposed to the King William Reservoir since its inception. There will only be 600,000 people in the Newport News area if this project is built so that the area can continue its uncontrolled development. I urge you to deny Newport News' request for the five-year extension of their current permit. Several important things have changed since the issuance of the original SWCB permit for this project. The most important is in regard to the VMRC permit for the intake structure. There are significant conflicts between the water withdrawal approach as set out by the SWCB in 1997 and VMRC in 2004. The SWCB permit allowed for most of the water to be withdrawn from the river during the higher-flow months of the year, in particular late winter and early spring. When VMRC issued their permit, they sought to protect the endangered shad by establishing a hiatus on water withdrawals from the river during spawning season from March 1<sup>st</sup> through July 31<sup>st</sup>. This means that much of the water would be withdrawn during periods of low flow, which might have a much more adverse effect on the ecosystem of the river. This conflict in withdrawal approaches represents a change in the original authorized activity under the SWCB permit. The permit modifications currently proposed by Newport News, which are extensions of the time permitted for several studies, ignore this far more significant deficiency with the permit. In light of this major change in the project, we request that the SWCB and DEQ deny this permit extension and conduct a full review of the permit through the permit renewal process in 2007.

COMMENTER: Jo Ann Davis, Member of Congress, House of Representatives, First District, Virginia

COMMENT: The City of Newport News wishes a 5-year extension to its VWP permit to enable it to complete several ecological plans and to conduct various studies. The topics of these studies involve plans for drought water conservation, salinity monitoring, wetlands mitigation, ecological monitoring, and operations and management. I believe that these studies should be carried out prior to the granting of an extension. The results may determine that the project is not in the best interest of the Commonwealth. The VWP permit issued in 1997, allowed for a water withdrawal from the Mattaponi River during high flow times of the year. However in 2004, the Virginia Marine Resources Commission issued a permit that restricts water withdrawals from approximately March 1 through July 31. This major discrepancy, as well as other questions, needs to be examined prior to an extension to the permit. The original wetland mitigation plan has also changed and one or more large mitigation sites are not presently available. This conflicts with the VWP permit, which states that the reservoir will protect instream beneficial uses and will not violate applicable water quality standards. Request that the SWCB and DEQ fully evaluate the impacts from the proposed reservoir prior to a 5-year extension. I formally request that the 5-year extension be denied this year.

COMMENTER: Diane Dennette-Shaw

COMMENT: Opposed to any extension of Newport News' Virginia Water Protection permit for the King William Reservoir. Support a thorough review of the reservoir project when the project comes up for renewal in 2007. It is my understanding that a permit cannot be extended if there are changes in the project. There are at least two significant changes to this reservoir project which make it ineligible for a permit extension. First, the scheduling for water withdrawals from the Mattaponi River has been significantly altered from the original permit issued in 1997. This schedule and amount of withdrawals from the Mattaponi are central provisions of the VWP permit issued by the SWCB. Second, the Conceptual Wetlands Mitigation Plan is no longer valid because of the loss of two major land parcels previously identified as mitigation sites. An approved Conceptual

Mitigation Plan is a prerequisite to securing a VWP permit; because Newport News does not have an acceptable plan at this time, no permit extension should be granted. Third, I believe that Newport News could and should invest their money into a desalination plant. Fourth, I believe that we have done enough to the Native American Indian and this permit might be a Water Protection Permit for Newport News, but it affords no such protection to our Native American Indian. Urge the SWCB to deny the requested extension to VWP permit 93-0902.

COMMENTER: Emma E. Garrison, Staff Attorney/Graduate Fellow, Georgetown University Law Center, Institute for Public Representation, Attorneys for the Mattaponi Indian Tribe

COMMENT: Opposed to the extension of the VWP Permit for the King William Reservoir project. The reservoir will cause lasting harm to the Mattaponi River and to the Cohoke Creek wetlands as well as the Tribe's cultural connection to each. The Tribe maintains that the damage from the reservoir cannot be mitigated and asks that the DEQ deny the City's request for extension. The VA Administrative Code states that "[e]xtension of VWP permits for the same activity beyond the maximum duration specified in the original VWP permit will require reapplication and reissuance of a new VWP permit unless the permittee complies with the provisions of 9 VAC 25-210-185.9." (VAC 25-210-110(4)) The provisions of 9 VAC 25-210-185.9 clarify that such extensions are allowed only when an activity is expected to continue past the original expiration date "without any change in the activity authorized by the VWP permit." Granting an extension is not appropriate here because the scope and nature of the activity has changed significantly since the permit was originally issued. Additionally, new information about the viability of this project has become known since the project was initially approved. Therefore, DEQ should deny the City's extension request and allow the SWCB to closely examine the current status of the King William Reservoir project when the City submits its reapplication for the permit in 2007. The project's scope has changed significantly since the permit's approval (from 1,526 acres to 7,629 acres to account for the wetlands mitigation plan) resulting in greater impact on Native American sites identified through archaeological surveys. The nature of the project has also changed significantly because of the additional pumping restrictions of the VMRC permit. The Tribe asks that DEQ deny the extension request so that it may address the issue now instead of five years from now given that there is no clear evidence that the reservoir is feasible to meet the region's water needs. The Tribe would like to emphasize that the project's devastating impacts the tribe and the environment could be avoided as the project is not necessary to provide the region with its future water needs. The projected regional deficit figures for the year 2040 has dropped significantly since the permit was granted in 1997 and there are several less destructive alternatives that are viable means of serving the regions' water supply needs. It is not appropriate to grant a permit extension of five years when the scope and the nature of the project has changed and questions about the viability to serve the intended purpose remain unanswered. Therefore, the Tribe requests that the City's extension request be denied.

COMMENTER: Alan W. Gold

COMMENT: Urge the SWCB to deny the requested extension to VWP Permit 93-0902. The permit cannot be extended if there are changes in the project since the permit was issued. Scheduling for water withdrawals from the Mattaponi River has been significantly altered from the original permit issued in 1997. Also, the Conceptual Wetlands Mitigation Plan is no longer valid because of the loss of two major land parcels previously identified as mitigation sites.

COMMENTER: Ron Hachey, County Administrator, King and Queen County

COMMENT: King and Queen County has been an active participant throughout the permit process and continues to be opposed to the proposed reservoir project and respectfully requests denial of this permit extension. The King and Queen Board of Supervisors reaffirms its opposition to the reservoir project since it fails to mitigate adverse environmental/economic impacts to King and Queen residents as well as to King and Queen County government by restricting the County's future economic development objectives along the Mattaponi River. As per Section 62.1-44.15 of the Code of Virginia, permit extensions may be granted as long as there are no changes to the project that was authorized by the VWP Permit. In light of this requirement, the King and Queen Board of Supervisors and citizens would like the SWCB members to determine whether or not the revised water withdrawal schedule proposed to avoid the peak shad spawning periods constitutes a change from the approved water withdrawal schedule in the VWP Permit approved by DEQ in 1997. The Board would also like to know: 1) What mechanisms/procedures have been proposed in the amended application to mitigate our farmers' inability to irrigate their crops during the dry summer months when Newport News would also be pumping water? 2) How will Newport News mitigate future adverse economic impacts to King and Queen



County due to our inability to obtain effluent discharge permits within the 5-mile zone of influence both upstream and downstream of the city's intake structure? 3) How will Newport News mitigate the inability of King and Queen County to withdraw water from the Mattaponi to meet King and Queen's future public water needs? Urgently request that the SWCB deny this permit extension request and require a full review of the project since the project has undergone substantial changes since the VWP Permit was first issued and the upcoming environmental studies might identify additional adverse impacts that might not be able to be mitigated by Newport News.

COMMENTER: Mary Beth Hawn

COMMENT: A number of years ago the King William Board of Supervisors voted to allow Newport News to build a reservoir in King William County. Newport News has requested specific volumes of water to be drawn from the Mattaponi River to cover the needs of the peninsula. However, no steps to curb growth, implement water conservation were outlined in the proposal. Additionally, the final 1997 Final Environmental Impact Study acknowledged that practical non-reservoir alternatives could supply the water necessary to support the peninsula. If the reservoir is not necessary, we should seriously be questioning the largest permitted loss of wetlands in Virginia since the adoption of the Federal Clean Water Act. The Virginia Water Protection Permit for the reservoir will expire in December 2007. This permit needs to expire to allow conflicts in the requested permitting that Newport News has not resolved. This would allow exploration of answers to questions and conflicts in the upcoming year, not six years out.

COMMENTER: Janice R. Larsen, DVM

COMMENT: Opposed to the permit extension proposed by the City of Newport News for the King William Reservoir, because: The original permit mistakenly accepted a reservoir design that was scaled to produce 40 mgd. We now know that the regional water needs only requires 16 mgd; The Conceptual Wetlands Mitigation Plan originally accepted by the Corps of Engineers and Newport News has been undermined, as two major parcels of land included in the mitigation plan have been sold and are no longer available.; The intake structure is located in the middle of the most important shad spawning ground in the state.; and, The reservoir was designed to withdraw Mattaponi River water during the heaviest floods in late winter and early spring, but the design has been changes to withdraw water during the driest months of the year – a complete reversal of the permitted plan.

COMMENTER: Tyla Mathason, representing Harvey Morgan

COMMENT: The permittee is requesting a five-year extension to its VWP permit, from December 22, 2007 to December 22, 2012, which would allow for an extension of the submission dates for several studies. If the SWCB denies the permit extension, the permittee would need to apply for a renewal of its permit in 2007. This would allow the SWCB to review fully this controversial project during the coming year. The King William Reservoir, if built, would result in the loss of 437 acres of wetlands, the single largest permitted loss of wetlands since the adoption of the federal Clean Water Act of 1972. The project would have significant adverse impacts on the wetlands and aquatic ecosystem in the Cohoke Creek area. In compliance with state regulations, the DEQ must evaluate any changes to the project prior to reaching a decision on a permit extension. The project permitted by the SWCB in 1997 is substantially different from the project permitted by VMRC in 2004. The SWCB needs to consider the implications of any known changes. The original conceptual wetland mitigation plan has changed (two major mitigation sites are no longer available). In light of the fact that there are changes in the originally permitted activities to the VWP permit, I formally request that the SWCB deny any bid for a permit extension and undertake a full permit review under the reapplication and reissuance process. She added that in addition to demanding more effective year-round conservation measures and drought restrictions from Newport News, the SWCB should require Newport News in its 2007 permit reapplication to assess the impact of utilizing recycled water for non-drinking purposes to reduce demand for its drinking water.

COMMENTER: Delegate Harvey B. Morgan, Ninety-Eight District, Virginia House of Delegates

COMMENT: The permittee is requesting a 5-year extension to its VWP Permit, from December 22, 2007 to December 22, 2012, which would allow an extension of submission dates for several studies: drought water conservation plan, ecological monitoring plan, salinity monitoring plan, final wetland mitigation plan and operations and management plan. If the SWCB denies the permit extension, the permittee would need to apply for a renewal of its permit in 2007. This would enable the SWCB to review fully this controversial project during the coming year. The King William Reservoir, if built, would result in the loss of 437 acres of wetlands,

the single largest permitted loss of wetlands since the adoption of the federal Clean Water Act of 1972. The project would have significant adverse impacts on the wetlands and aquatic ecosystem in the Cohoke Creek area. The project permitted by the SWCB in 1997 is substantially different from the project permitted by the Virginia Marine Resources Commission (VMRC) in 2004. The SWCB permit limits withdrawal generally to periods of high flow while the VMRC permit sets up a pumping hiatus in order to protect the shad during spawning season, a high-flow period of several months. This difference, as well as other significant changes, demands that the discrepancy be addressed prior to a permit extension or renewal. The DEQ VWP Permit No. 93-0902 states that the proposed project will protect instream beneficial uses and will not violate applicable water quality standards. However, the original conceptual wetland mitigation plan has changed. Two major wetland mitigation sites in the plan are no longer available, placing the permittee in jeopardy of violating the condition requiring the successful compensation of wetlands. In light of the fact that there are changes in the originally permitted activities to the VWP Permit, I formally request that the SWCB deny any bid for a permit extension and undertake a full permit review under the reapplication and reissuance process.

COMMENTER: Delegate Christopher K. Peace, Ninety-Seventh District, Virginia House of Delegates

COMMENT: The proposed King William Reservoir would be located in a county I represent, and I share the concerns of the overwhelming majority of my constituents both in King William and in King and Queen that this project is not needed and would result in unacceptable harm to those living there as well as the Mattaponi River and the Cohoke Creek Valley. I also believe that the historical and cultural impacts jeopardize the richness of our area. It would appear that there have been major modifications to the reservoir project which would negate consideration of an extension. One of the changes is the water withdraw regimen imposed by the Virginia Marine Resources Commission which is significantly different from the withdraw restrictions imposed in the VWP permit. Additionally, the Conceptual Wetlands Mitigation Plan previously approved by DEQ may now be unacceptable as a result of the unavailability of two sizeable tracts of land that had been identified as mitigation sites. These changes in the project should disqualify consideration of an extension as the project would no longer meet the "same activity" requirement found in 9 VAC 25-210-185. I also question the modified deadlines for the several studies Newport News is required to complete. What critical data would these studies provide that would not be available in 2007, and how might it affect the permit renewal decision? Object to the request by Newport News for an extension of VWP permit (VWP 93-0902) for the King William Reservoir and urge the denial of the request.

COMMENTER: Joseph Tannery, Chesapeake Bay Foundation

COMMENT: The major question is whether this extension request is permissible under the Virginia Water Protection Permit regulation? The regulation states that any permittee with an effective water protection permit that is expected to continue after the expiration date without any change in the activity authorized by the VWPP shall submit good notification, et cetera. If there is a change in this project, then under the law you cannot approve this extension. The change goes to the very core of this project. This is a water withdrawal protection permit, but the water withdrawals have changed. This permit must be denied as a matter of law.

COMMENTER: Jay Taylor, Wetlands Loss

COMMENT: We have been opposed to the plan primarily because of the huge loss of wetlands and there are doubts that the mitigation plan would actually lead to no net loss of wetlands' functions. The project should probably been denied in the first place all together. The project changes and information that came to light during the VMRC process forces a reconsideration of the wetlands sequencing analysis. The primary duty to avoid wetland impacts in the first place, to avoid them, needs reconsideration now that we know how little water is really needed and how many alternatives we have for the reservoir. We are opposing the extension now because of all the changes to the permitted activities and the operation of the reservoir and the availability of mitigation resources and the very need for the reservoir. We urge the SWCB to deny this permit extension.

COMMENTER: Robert W. Vaughan, M.D.

COMMENT: Newport News should not receive an extension of their permit to withdraw water from the Mattaponi River. Much has changed since the first permit, including estimates of Newport News' needs and the effect of the present shad protection plan on potential withdrawals from the river.

COMMENTER(S): (248): Kathryn Abel; Evelyn L. Allen; Jason Altice; Helen N. Alton; Diana Artemis; Barbara J. Ashburn; Beatrice C. Ashley; Benjamin Axleroad; Bonita I. Bailey; Elizabeth C. Bailey; Meredith Bailey; Sheila C. Bailey; S.R. Bailey; Mary Sue Bancroft; Pamela Barcita; Marian Hickline Beam; Lucille A.

Beasley; Mary M. Bechtold; Peter Bell; Caryn Boehm; Shelley G. Bourdon; Renee Bova-Collis, MSW, LCSW; Maria Bowling; Kathy L. Branch-Jones; Patricia D. Breedon; J.D. Brooks; David C. Brown; Peter Buck; Linda Burchfiel; Andrea Bureman; Scott Burger; Catherine Butler; Paula Butts; Patricia C. Byrne; Thomas Carothers, MD; Lynne Carruth; Elizabeth Christeller; Richard J. Churray; Alisa Clark; Marsha F. Clark; Becky Cloudt; Robert Lee Conder; Charles Conley; Stephen B. Conner; Dana Cook; Jeffrey S. Cope; William Scott Cowles; Elizabeth M. Crawford; George Crutchfield; Angela L. Daniel; Esther Day; Theresa R. Denley; Judith B. Dent; William H. Dent, Jr.; Kristin C. Dillard; Robert S. Dillard; Luralee Dowling; Matt Duffy; Robert Ehrhart; Marjorie S. Elliott; Lauren L. Erera; Shayne Estes; Dave and Vicki Fahringer; Robert Fener; George Ferguson; Atman & Al Fioretti; Cecil & Leona Fitchett; Jo Fitzgerald; Catherine Fleischman; Rosa L. Fleming; Robert L. Flint, PE, CGR; Gary S. Flure; Amanda J. Foster; Catharine Fowle; Barbara L. Franko; Inez Fridley; Joanne Fridley; Mary C. Gaffore; Dorothy Hudson Gallion; John Gallini; Virginia M. Gibbs; Betty F. Giragosian; Anne Cortlandt Glover; Ralph Grove; Michael L. Gunn; Rebecca L. Guy; Janice Hamilton; Michael Ann Harper; Jon S. Harris, Jr.; Carol A. Harvey; Ronald D. and Elizabeth G. Haywood; Christine Hershey; Nancy G. Heusen; Amy Hicks; Richard Hightower; Carol Hildebrandt; Judy Hinch; Mary E. Hodge; Tom Hoffman; Moira Howard-Jeweler; Crystal Hoyt; Lt. Col. (ret.) and Mrs. David R. Huguet; Mitzi Humphrey; Will Hutcheson; George Ibarra; Wendy Jaccard; Melody Jeffrey; Brenda M. Jernigan; Aaron B. Jones; Joe B. Jones; Lucretia Jones; Jennifer Johnson; Dr. C.O. Justice; Deborah Katz; Dewey Keeton, III; Mary Kier; Elizabeth P. Kendrick; Dr. & Mrs. Stephen B. Kopelove; C.A. Koshock; Michael J. Krimmer; Rose P. Larlaie; Jan Larsen; Mary E. Lawrence; Rebecca Lawrence; Jessica LeTourneau; Mary Stewart Lewis; Debora Long; John R. Long; Paemela Lowe; James P. Lynch; Peggy L. Lynn; Duncan Macomber; Michael Mailloux; Lucinda Mallihak; Paula A. Massouh; Donna Matthews; Kelly McCants; Mark McClain; Kim McClamroch; Pamela J. McCune; Ashby McNeil; Hadley Milliken; H. Gregory Mitchell, Sr.; Bill Modica; Frances Mohr; Rebecca L. Montgomery; Carole E. Morik; Dustin Mountcastle; G. Myrkle; Shirley Napps; Adam Nathanson; Ann T. Norris; Barbara M. Null; Nora Rae O'Brien; Gerald A. Oefelein; Rozella Olsen; Lisa M. Osborn; Susan Red Cloud Owen; D. Overstreet; Lee Page; Diana C. Parker; Ada Lee Pitts; James Poole; Sylvia P. Ramsey; Melanie Reborchick; Joshua Rellick; Bob Richardson; David Rogers; Robert W. Roig, Sc D; Katy Rugg; Jo-Linda M. Sanders; Majorie F. Sargent; Will and Nedra Scarrow; Diane M. Scott; Nancy Servais-Ford; Nichelle Setzer; Dr. and Mrs. Keith R. Shelton; Ross Shearer, Jr.; George Sibley; Margaret C. Siegel; Johnnier R.S. Skinner; Carolyn C. Slye; Lowell Smith; Phillip A. Smith; Robert E. Smith, Jr.; Dana Snead; Alan Somers; Jeff D. Somers; Patricia Soriano; Linda Southall; Brielle Mountcastle Stanley; Adrienne Strandberg; Nancy Summers; Michael Testerman; Emily Heath Thompson; Allen Thurston; Betty Tmuir; James Torres; Paul G. Toxie; Margaret B. Tucker; Diana Tutelo; Steve Tuttle; Keith Van Allen; Ritchie Vaughan; Robert W. Vaughan, MD; Jerome Vitner; Susan Voigt; Reine Walker; Sandra F. Walker; Martha M. Ware; Rosey Warner; Jim Warren; Thomas Wasmund; Ray Waters; William T. Watkins, III; Deborah Weinischke; Shirley Wells; Catherine M. Welsh; Peter Whitehead; Barbara Williamson; Ann M. Woodlief; Charles Todd Woodson; Jocelyn Yeh; Sandra Zaccagnini; Walter Zadan; Tom Zembar; Jay Zimmermann

COMMENT: Opposed to any extension of Newport News' Virginia Water Protection permit for the King William Reservoir. Support a thorough review of the reservoir project when the project comes up for renewal in 2007. It is my understanding that a permit cannot be extended if there are changes in the project. There are at least two significant changes to this reservoir project which make it ineligible for a permit extension. First, the scheduling for water withdrawals from the Mattaponi River has been significantly altered from the original permit issued in 1997. This schedule and amount of withdrawals from the Mattaponi are central provisions of the VWP permit issued by the SWCB. Second, the Conceptual Wetlands Mitigation Plan is no longer valid because of the loss of two major land parcels previously identified as mitigation sites. An approved Conceptual Mitigation Plan is a prerequisite to securing a VWP permit; because Newport News does not have an acceptable plan at this time, no permit extension should be granted. Urge the SWCB to deny the requested extension to VWP permit 93-0902.

#### CATEGORY IV: DENY EXTENSION REQUEST – PERMIT INCONSISTENCIES AND IMPLICATIONS OF OTHER INFORMATION

COMMENTER: Michael Town, Director, Sierra Club – Virginia Chapter

COMMENT: In regard to the request by Newport News for a modification and five-year extension of its VWP permit for the King William Reservoir and DEQ's preliminary decision to approve the modification request and

modify the permit: request that DEQ reverse its position and deny the request for extension. There are many questions relating to the reservoir project which require a full review within the next year and not after Newport News has had five additional years to advance this project. One of the most problematic is the inconsistency between the State Water Control Board's Virginia Water Protection permit and the Virginia Marine Resources Commission's permit relating to water withdrawals from the Mattaponi River. We appreciate DEQ's position that the five-year extension would give Newport News more time to complete several studies that would provide additional data by which to evaluate a permit renewal in 2012. However, upon review of the studies that are to be done, we do not see what additional information would actually be provided that would aid in resolving this fundamental question as to the project's viability under the existing withdrawal regimes. Other questions, including the adequacy of Newport News' wetlands mitigation plan, similarly deserves answers in the next year and not six years from now. This permit extension should be denied and a full review of the project should be undertaken because: 1) Newport News has not offered an explanation as to how the data from these studies may actually better inform the permit renewal process if it is delayed until 2012; 2) There are significant conflicts between the water withdraw approaches set out by the SWCB in 1997 and the VMRC permit issued in 2004; 3) When the original VWP permit was issued, Newport News claimed the limits on withdraws imposed by the SWCN restricted the safe yield of the project to the point that it would not provide enough water to justify its construction; 4) Considering Newport News' objections to the 1997 VWP permit, the city needs to demonstrate that the reservoir can provide a viable source of drinking water under the limitations on water withdraws imposed by VMRC in 2004; and 5) The Conceptual Wetlands Mitigation Plan originally accepted by the Corps and Newport News has been undermined as two major parcels of land included in the mitigation plan are no longer available. It is the Sierra Club's position that these factors represent changes in the originally authorized activity under the permit and that the permit may not be extended under 9 VAC 25-210-185. There have been many changes in the VMRC permit and how these two permits would come together. Beyond those changes, another important change is the Chesapeake Bay 2000 Agreement. One of the goals of the Agreement is to preserve, protect and restore those habitats with natural areas that are vital to the survival and diversity of the resources of the James River. Further, the Agreement sets forth goals to achieve a net loss of existing wetlands and to achieve a net resource gain by restoring 25,000 acres of tidal and non-tidal wetlands. The Agreement was not in effect in 1997 when the SWCB approved the permit for the King William Reservoir. The reservoir project will result in a net loss of wetland functions and acreage to Virginia. Denying the permit extension and allowing a full review of the permit in 2007 would provide the Board with the opportunity to determine that the project is in compliance with the Agreement, before the destruction of the wetlands. Furthermore, the modifications proposed, which are extensions of the time permitted for several studies, ignore far more significant deficiencies with the permit as identified above. In light of these deficiencies and major changes in the project, the SWCB and DEQ should undertake a full review of the permit and should deny this permit extension request.

COMMENTS: Bradford Worthington

COMMENT: We have heard: that the extension of this permit is illegal under Virginia law; that there were material errors in the initial sizing of the original project; arguments regarding enhanced generation of highly neurotoxic Methyl Mercury that would be a result of construction of the reservoir as well as a number of other issues. The SWCB should deny the permit extension and conduct a full review of these arguments and their associated data. This will enable the SWCB to make a new and fully informed decision as to whether a permit should be issued.

COMMENTS(S): (10): Waterman's Associations – Kelly Victor Place - on behalf of: Coastal Virginia Waterman's Association; Twin Rivers Waterman's Association; Up River Waterman's Association; Tangier Island Waterman's Association; Lower Chesapeake Bay Waterman's Association; Virginia Waterman's Association; Working Waterman's Association; Virginia Soft Crab Association; Hampton Roads Waterman's Association; & Independent Waterman's Association

COMMENT: Request that the permit extension request be denied. Changes in the originally permitted withdrawal regime and questions of permit condition compliance necessitate reapplication for a permit renewal. Questions of the very feasibility of the project in the context of the new VMRC pumping restrictions and the existing VWP minimum instream flow requirements, underscore the need for a full permit reapplication and analysis of the project. Concerned over the many inconsistencies in the permits and of the unsatisfactory



progress in the various eco-monitoring and mitigation plans. One issue that has not been adequately assessed is the predictable flux of methyl mercury (MeHG) into the ecosystem where it will bioaccumulate into the fish, birds and humans as a direct result of this project. Considering that there are already numerous MeHG fish consumption advisories in both the Pamunkey and Mattaponi Rivers, we maintain this watershed is the last place you would want to add new sources of MeHG to the food chain. We would like for the SWCB and the VA DEQ to investigate this danger. We ask that any water quality or ecomonitoring plan include stringent testing and quantification of methyl mercury bioaccumulation in the food chain at it's current level in order to establish a baseline and that the fish, birds, and people who eat large amounts of fish or water fowl from the two rivers be closely monitored. On behalf of the ten listed waterman's associations I ask for this permit extension request to be denied. We feel the applicant should reapply and have a proper permit review according to law as stated in 9 VAC 25-210-110(4). We would also like to reiterate our request for the public comment period to be extended and for the SWCB not to make its decision on the permit extension request at their scheduled meeting on September 6, 2006. It would be premature for the SWCB to make its decision on that date due to important new information of great relevance to human health and the protection of the Commonwealth's natural resources. In the interest of transparency and public confidence we urge you to make your decision at the following SWCB meeting in December.

**CATEGORY V: DENY EXTENSION REQUEST – VIABILITY OF THE PROJECT; ENVIRONMENTAL FACTORS AND IMPACT ON THE MATTAPONI RIVER; WETLAND AREAS AND NATIVE AMERICANS**

**COMMENTER:** Henry R. Broaddus

**COMMENT:** Opposed to the requested extension of the renewal deadline for the permit issued for the proposed Newport News reservoir. Concerned about the degraded condition of both the Pamunkey and Mattaponi rivers. The impending lapse of the ten-year term of the VWP permit does not reflect an inadequate length of time as much as it reflects a sufficient amount of difficult, contentious and unanswered questions that need to be addresses in a full hearing for renewal that accounts for the totality of the impacts of this changed project. It is in the public's interest not to allow the continued pursuit, for another five years, of a project with total negative impact that exceeds perceived benefit and actual need. Please deny the applicant's request.

**COMMENTER:** Ann H. Brummer

**COMMENT:** Oppose the permit modification and extension requested by Newport News for the King William Reservoir project. The delay would be contrary to state law. A review in full should be scheduled at this time. Newport News does not show need. Concerned for the Indians, the local destruction of one of the major tributaries to the Chesapeake Bay, the Mattaponi River, and the loss of 437 acres of wetlands.

**COMMENTER:** Arnold Brunk

**COMMENT:** We need to preserve our wetlands and our pristine rivers. We don't have many left.

**COMMENTER:** Paulette Brurich

**COMMENT:** Opposed to the extension. Agree with all the reasons for denying the permit extension. In addition, the property where I live will be directly impacted. My home is on Cohoke Creek. The septic field will be impacted and the reservoir property will be within ten feet of my porch.

**COMMENTER:** Dori Babyak Chappell

**COMMENT:** Concerned that the King William Reservoir will irrevocably alter this important freshwater system (the Mattaponi River). Countless specialists agree.

**COMMENTER:** Frances Broaddus-Crutchfield

**COMMENT:** Deny the latest request made by Newport News for an extension of the VWP permit for the King William Reservoir, because: the moral injustice to the Mattaponi Indian Tribe; the destruction of more than 400 acres of wetlands; the Newport News water need has been greatly exaggerated; there are less damaging alternatives; the harm to shad from water withdrawal and machinery; the expense of Chesapeake Bay cleanup during the continual fouling of its tributaries; the consummate greed of one city that desires control of water at the expense of eco-systems, rural communities and indigenous people; and an opportunity for a new start, a chance to make the right decision, considering more recently delineated changes, discoveries and deficiencies.

**COMMENTER:** Carl Custalow, Chief of the Mattaponi Tribe

**COMMENT:** Opposed to the King William Reservoir project. The project will be withdrawing millions of gallons of water from the Mattaponi River, thereby destroying hundreds of acres of wetlands, threatening to

destroy our way of life. Because of the devastating impact that the reservoir will have on the tribe, we are here today to ask you to deny Newport News' request to extend the project permit and to require the permit to go through the federal review and renewal process currently scheduled for 2007. The American shad is particularly important to our culture and way of life. We have operated a shad hatch since 1917 on the Mattaponi River. Withdrawing 75 million gallons of water a day will increase the river's salinity, interfering with the shad spawn and be threatening to surviving young shad. Now that the wetlands mitigation sites are part of the project, the scope of the project has increased bifold, and many more culturally and historically significant sites will be damaged than originally thought. All of these devastating impacts to the tribe could be avoided because the project is not even needed to provide the region with sufficient water supply in the future. The projected regional water deficit for the year 2040 was originally nearly 40 mgd estimates now set that deficit at 15.9 mgd. Various studies indicate that there are less destructive ways of serving the regional water supply needs. We urge you to require the city to demonstrate the reservoir is still a viable source of drinking water, given the affect of the minimal flow restrictions in the VMRC permit. Request that you deny the request for extension of the permit.

COMMENTER: Sharon Hill

COMMENT: This project allows for the largest destruction of wetlands since the passage of the federal Clean Water Act. Urge Governor Kaine to direct the Virginia Department of Environmental Quality to deny the Newport News' request for an extension of the permit for the King William Reservoir. This, the first permit issued by the SWCB was for an entirely different project than the one approved by the VA Marine Resources Commission. Many questions need to be answered.

COMMENTER: Sarah T. Kadec

COMMENT: The Virginia Water Protection Permit issued in 1997 for the King William Reservoir is set to expire in December 2007. Newport News has opted to avoid the permit renewal process by proposing a 5-year extension of the permit. This simply should not be permitted. Virginia needs a major Water Supply Plan. It seems that only that will provide a reasonable approach to meeting the State's water needs in the long term. Newport News says the reservoir will meet the needs of this area through 2050, but surely that cannot be considered a long-term solution. In the meantime, we will have lost a huge number of wetlands, further degraded the Chesapeake Bay and done irretrievable damage to the Mattaponi and Pamunkey Rivers, probably the last really pristine rivers in the State. There are numerous other reasons for denial of the permit renewal; the future of the shad population and concern for the Indian tribes in the King William area are only two. Request that Newport News' request for an extension of their permit be denied.

COMMENTER: Joshua Rellick

COMMENT: We have heard about the effects the reservoir will have on the shad, the American Indian artifacts, the wetlands and the forest. We have heard about the two times that this permit was denied, once by the Army Corps of Engineers, Carl Carroll, and once by VMRC. Newport News needs to be held to the reapplication process that was originally assigned.

COMMENTER: Mark H. Ryan, M.D.

COMMENT: In the past, it has been demonstrated to the U.S. Army Corps of Engineers and the Virginia Marine Resources Commission that the King William Reservoir project was not needed and would be too destructive to local environmental and historically sensitive sites to merit its construction. The proposed project, if built as planned, would result in the largest loss of wetlands in Virginia since the passage of the Clean Water Act – estimated at more than 400 acres. The intake structure for the reservoir is also planned for the most sensitive area for shad fisheries reproduction on the Mattaponi River. Additionally, it is estimated that 100 Native American archeological sites will be inundated by the proposed 1500-acre reservoir. Newport News defends the reservoir project as a necessary source of drinking water to communities on the Virginia Peninsula. Several independent studies, including one by the Corps of Engineers, have found that this is not the case. Even if this project is not currently necessary, the reservoir would provide a new source of water to allow further development beyond what the current infrastructure can support. In other words, it seems that the primary push for this reservoir is to allow developers to continue irresponsible and uncontrolled growth and to benefit their own agendas without regard to the greater harm done to the Commonwealth. Given the proven fact that this project is not currently necessary, it seems appropriate to at least allow opponents to the plan to be heard again. I hope that the extension of the original permit is denied, requiring the hearing for a renewal of the permit. This

way, the facts can be reviewed and the decision could more accurately reflect the risks and benefits of the project. I ask that you to consider the harms that seem evident in the project and stop the King William Reservoir and thereby save the Mattaponi River and the environmentally and historically sensitive sites.

COMMENTER: Ritchie Vaughan

COMMENT: Urge you to deny the request for a permit extension and instead force Newport News to renew this permit next year. If Newport News receives the extension, the city may begin ground construction without further review of the proposed King William Reservoir. Unfortunately, the plan does need further scrutiny. The purpose of the water project is based on projected future need, as projected by one study on the 1980's. To date, these calculations have proven inflated, and in the state's last big drought on 2001, Newport News was the only city in the region not to have to mandate water restrictions. Multiple studies since the eighties have all concluded the city does not need this water. We need to force our cities to be innovation with their water recycling, water desalinization, and water conservation, all of which are open to Newport News. Independent studies on this project have also indicated large ecological damage to the Mattaponi and Cohoke Creek that Newport News continues to deny. Salt water intrusion up the Mattaponi will destroy its rare tidal freshwater hardwood swamps that have been virtually eliminated from the east coast due to water projects. It will damage the river's shad run, on which the Mattaponi Indians rely for economic sustainability. This project will destroy more wetlands than any project since the federal Clean Water Act and wetlands are vital to the State's cleanup of the Chesapeake Bay. Newport News' proposed method for wetlands engineering to replace the destroyed natural ones are questionable and deserve more scrutiny before implementation of the project. Forcing Newport News to renew the permit would force the city to resolve inconsistencies in its project. The SWCB and VMRC have issued different restrictions, some of which the city has publicly rejected. If a grassroots, rural coalition has been able to stall the city 15 years, surely there is merit to the opposition that deserves another chance to be heard in a setting where Newport News' economic and political power will not override science.

COMMENTER(S): (291): Rob & Jenn; S. Abbassi; Karie & John Alton; Antigone Ambrose; Dean Amel; Jennai Anderson; Ron Anderson; Suzanne Ankrum; Diana Artemis; Barbara Atkinson; Lesley Austin; Bonnie Bailey; Wendy Balazik; Leanna Balsley; Robert Barnes; Lenore Bassett; Edrie Bays; Mary M. Bechtold; Oza Bell; Hylah H. Boyd; Rebecca Boyd; Kathy Branch-Jones; Henry Broaddus; Steve Brooks; Cindy H. Browder; Cynthia Brown; Jeff Brown; Ann H. Brummer; Jeannette Brummer; Peter Buck; Scott Burger; Caryl Burtner; Sharon Burtner; Cynthia Burton; Tara Bushnoe; Ava Jo Butcher; David Campbell; Kenneth Campbell; Robert Cannon; Zady Carlton; Julie Carr; Clara Cash-Green; Jimmy Carrell; Robert E. Chappell; Eileen Chieco; Gena Chieco; Donna Childress; Kenneth Chisolm; Linda M. Cifelli; Diane Clark; Lorelee Clark; Jay Clarke; Thomas Cleary; Audrey Clement; Brian & Rita Cohen; John Coggin; Darlene Coleman; Dana Cook; Samuel R. Cook, PhD; TracyAnn Costello; Mary E. Cottrill; Kitty Cox; Thomas Coyner; Richard Crisci; John A. Cruickshank; Francis B. Crutchfield; George T. Crutchfield; Sue D'Onofrio; John A. Davenport; Jennifer Davis; Diane Day; Dr. Diane Dennette-Shaw; Pat Dietch; Kristen Dillard; Robert Dillard; Josie Downey; Georgeanna Driver; Michael Drummond; John Dukovich; Mary Dunbar; Kevin Dunn; Jacqueline Dwyer; Sharon Sun Eagle; Ron Edwards; Patricia Eichenberger; Jim Emerson; Annick Ensley; Linda Even; Linda Exstrom; Dennis Fassman; Leslie Fellows; Atman & Al Fioretti (Virginia Sierra Club – Blue Ridge Group); Carrie Fischett; Jason Fizer; Elizabeth Flanary; Jennifer Frith; Lisa Fues; Neal Furgurson; Tim Gabbert; Christi Garrett; Susan Garrett; Robert D. Gilges; Steven Gillespie; Alan Gold; Michael Goodin; Mary L. Grant; Stephen K. Greenwood; Ralph Grove; Chris Hager; Talbott Hagood; Pamela Hambleton; Betty Hamilton; Susan Harris; Dolores Healion; Steven Heinitz; David R. Herring; Sharon Jones Hill; Dianne Hinch; Mary Hodge; Patricia Hodge; Jay Howard; Michael Hudson; Preston Huffman; Tom Ihde; Donald Jeffries; Lloyd Johns; Murrell Johnson; Nina Keefer; Dewey Keeton, III; Rucker Keister; Joyce T. Kerns; Nancy Khan; Jamie King; Steve Knockemus; Jackie Kruszewski; Lisa Kuder; Bill & Linda Lane; Jan Larsen; David Lasris; Drew Lavan; Dorothy Laverdiere; Mary Lawrence; William Leath; Frances Lee-Vandell; Terry Levinson; Glenda Lewis; Sara Lewis; Larkin Linton; David Lipscomb; Erik Lokensgard; Joshua Low; James Lowenstern; Lorie Lowrey; Susan R. Luck; Patrick Lynch; Thelma & Michael Magyer; Louise Mann; Cheryl Martin; Paula Massouh; Tyla Matteson; George Maughan, M.D.; Kyle McAdam; Ann McAllister; Yvonne McGhee; Robert McIntire, III; Nicole McKeown; Deldon McNeely; Michele McRae; William Meade; David Meredith; Lynn Merhib; Jennifer Meyer; Ann Miller; Griff Miller; Dorothy Mills; Dr. Donald Mikulecky; Sandra Mikulecky; Elizabeth Minor; Lillian Mooradian; Ann Moore, PhD; Karen Moore; R. A. Morrison; Helen Moulis; Robert Mueller, PhD; Caroline

Norris; Judy Nye; Thomas Olsen; Gary Osborn; Karen Osborn; Darren Pace; Janet Paisley; Gregory Parcell; Anand Parikh; Diana Parker; Stephen G. Parker; Khlaire Parre; Susan Pauley; Brad Pearson; Mandy Petrocelli; Don and Jan Phillips; Donna Phillips; Brian Poe; Stewart Powell, Jr.; Lola S. Previs; Raymond L. Previs; Gray Puryear; Lisa Qualls; Danny Raikin; Beverly Rainey; Rajani Ranga; Michael Raz; Pete Rebick; Melanie Reborchick; Sherley Redding; Stacy L. Reed; James Rilee; Ann Rogers; Christina Roman; Paul Ronco; Jane Ruffin; Mary Ryan; Annamarie Sampley; Helen Sanders; Leonardo Sarli; Rosemarie Sawdon; Lisa Scharin; Dawn Shank; David Shantz; Floyd W. Shaw, Sr.; Jane Simpson; Mary Sisson-Vaughan; Herman Smith; John Smith; D.E. Snead; Lucy Sotar; Brad Squires; Chris Stafford; Loudell Staunton; Judith Steel; Katie Stiff; Brenda Sullivan; Suzanne Tarr; Mike Taylor; Michael Testerman; Allen Thurston; Bill Tichacek; Meredith Townsend; James Troy; Diana Tutelo; Kris Unger; Ritchie Vaughan; Jan Vinegar; Katrina Von Briesen; Will Wagoner; James Wamsley; James Warren; William Weinhold; Kiersten Weissinger; Catherine Welsh; Karen and Lee Westermann; Matthew White; Jim Wilkerson; Cyndi Willard; Barbara Williamson; Christine Woods; Eva Jo Wu; Maris Wurdeman; Gayle Yiotis; Brenda Yu; Sara Zaza

COMMENT: The Mattaponi River is threatened by the proposed King William Reservoir which several independent studies have determined is not needed. If built, the environmental harm which this reservoir would cause is well documented, to include the single largest loss of wetlands in Virginia since the passage of the federal Clean Water Act. The City of Newport News has requested a five-year extension which would delay a full review of the permit until 2012. A five-year extension would allow the City of Newport News to proceed with preparations for the reservoir while avoiding serious questions about the viability of the project and its impact on the Mattaponi River. Request that this permit extension request be denied.

COMMENTER(S): (3) Lee, Condor; Susan R. Luck; Donald H. Phillips, PhD

COMMENT: Opposed to the extension of the permit for the King William Reservoir. The extensive environmental damage (wetlands destruction, impacts on the Mattaponi River, etc.) have been well documented. There is no convincing case for the need for this project. Predictions of possible water shortages on the Peninsula were based on faulty models. Actual demand experience demonstrates that population growth demand has been offset by savings due to federal water efficiency standards. Based on the stalled growth it appears that Newport News and Hampton are very near their build out potential. James City County and York County plans indicate that together they expect to grow by about 68,000 persons. From these facts it seems that the maximum population for the Peninsula will be 545 thousand persons or less.

COMMENTER(S): (2) David and Sandra Gordon

COMMENT: Deny the request from the City of Newport News to extend its current permit limitations for its King William Reservoir past 2007. Ask that the requisite studies for further permit approval be performed in order to properly, legally, and ethically allow for environmental impact studies to review the harmful impact the reservoir may bring to the affected areas and the Mattaponi River. It is also imperative that several discrepancies between the permits issued by the SWCB and the VMRC be resolved.

COMMENTER(S): (2) Michael McKenney; Mary Jo Sisson-Vaughan

COMMENT: The SWCB Permit for the King William Reservoir (VWPP No. 93-0902) should not be extended beyond its December 2007 expiration. Negative and uncertain environmental impacts will be caused by removing significant amounts of water from the Mattaponi in a time when DEQ's own studies report that 63% of the Commonwealth's rivers are polluted. Before the first drop of water is taken from the Mattaponi, we need to better understand the impact on salinity levels, fish and other aquatic creatures, wildlife, and plants from grasses to trees. Studies should consider the future water need of all citizens along the tributaries as well as the main river, not just Newport News' projected needs.

CATEGORY VI: REVOKE THE PERMIT & DENY EXTENSION REQUEST – FUNDAMENTAL CHANGES AND MISREPRESENTATION OF MATERIAL FACTS

COMMENTER: Thomas Ellis

COMMENT: This reservoir project is a real boondoggle for the citizens of Hampton and Newport News. We are losing population. The original estimated water requirements of water were 40 mgd and the original permit from the SWCB was issued on that basis. Based on the findings of the Army Corps of Engineers, the actual need is only 16 mgd and there has never been any assessment of alternatives based on the actual water need. In addition to there being sound legal basis for denying this permit extension; there is also the sound practical basis of the difference in estimated water needs for the area. This project is based on a false representation of a need



and is going to adversely affect not only the environment and not only the rights of the Native American people, but also the wallets of the citizens of Hampton and Newport News. This permitting process should not be extended.

COMMENTER: Thomas C. Rubino, Alliance to Save the Mattaponi

COMMENT: Ask the SWCB to implement its option to deny the permit extension request. The issues which are the bases for this request are not new. You have heard continual opposition by the public for nearly a decade now. There have been elemental changes to the reservoir that was originally permitted in 1997. Three outstanding issues of concern are: 1) regional water needs changes; 2) pumping hiatus conflicts; and 3) mitigation changes. There has been a misrepresentation of material facts in this case. We cannot build a 40 mgd project on a 16 mgd basis. Under Virginia Code 25.210-130, it requires that wetlands or stream impacts be avoided and minimized to the maximum extent practicable. It is clear that this project's out-of-scale design cannot be consistent with the Code that requires that wetlands or stream impacts be avoided and minimized. Again on the basis of this, we ask the Board for denial of the King William reservoir permit.

COMMENTER(S): (57) Emily Ambrose; Douglas Austin; Sam Austin; Frank Bishop; Alan Brenner; Mr. & Mrs. Edward Brown; Linda Burchfiel; Abi Cielo; Paulette Claus; M. Cassandra Cossitt; Shari Darden; Ralph D. Eaton; Ron Edwards; Vera A. England; Richard Eramian; Margaret E. Eubank; Molly Fostek; Susan Garrett; Celeste Leitch Gates; Lisa Heuvel; Charles D. Joyce; Tom Klein; Dr. and Mrs. Stephen B. Kopelove; Larkin Linton; Molly S. Longest; Cindy Lumpkin; Jack M. Menke; Karen J. Menke; Dotty Mills; Virginia Moore Morrow; Dennis and Betsy Mountcastle; Lindy Patterson; Nathan Pope; Betty Powell; Dee Ragland; James Rilee; Kimberly Rilee; Thomas C. Rubino, Alliance to Save the Mattaponi; Rev. Karen J. Sandoval; John A. Senn; Kristina Spencer; Brielle Stanley; Jack & Elizabeth Tootelian; Mark Topazio; Kristina L. Vadas; John W. Wyatt; Jane and Harry Wells; Lee Westermann

COMMENT: The King William Reservoir is being assessed for a permit extension. The law only allows a permit extension without changes. There have been fundamental changes to the King William Reservoir regarding regional water need assessment. The three outstanding issues of concern are; 1) Regional water need changes; 2) Pumping hiatus conflicts; and 3) Mitigation changes. The original 1997 permit is based on the misrepresentation of material fact by Newport News that the regional water need is 40 mgd. However, the Corps of Engineers determined the regional water need is only 16 mgd. The King William Reservoir is scaled to produce 40 mgd. No alternatives based on 16 mgd have ever been studied by the state. The 1997 SWCB did not follow normal permitting sequences for the reservoir project. If the SWCB had waited for the Corps' assessment of regional water need, they would not have permitted a 40 mgd solution to satisfy a 16 mgd water need. By permitting a project of this size to satisfy a 16 mgd water need, the following unnecessary destructions will occur: 347 acres of wetland will be flooded, over 700 acres will be disturbed to replicate lost wetlands, 12.2 billion gallons of river water will be impounded, 2 mgd will evaporate from the 1500 acre surface, 2 mgd will be lost to underground seepage, increased salinity on the Mattaponi River, the most important shad spawning ground in the state will be damaged, 21 miles of free-flowing streams, 1,089 acres of upland habitat, and 1,526 acres of wildlife habitat damaged or destroyed, etc. According to the Norfolk Corps, many alternatives properly scaled for 16 mgd, including desalination, conservation, and gray water reuse would provide the area with water without any new reservoir. Not to mention the unnecessary cost of \$230,000,000. The VA Code states: "Any certificate issued by the Board...(may) be amended or revoked...(if) The owner has...misrepresented a material fact in applying for a certificate," and "Requires that wetland or stream impacts be avoided and minimized to the maximum extent practicable." The misrepresentation of material fact which has predicated the scale of this project cannot stand. We appeal to the SWCB to defend the State Code and prevent the unnecessary and illegal destruction of the greatest wetland area since the adoption of the Clean Water Act, and from spoiling the most important shad spawning ground in the state. We ask the State Water Control Board to revoke the King William Reservoir permit and to deny the extension request.

CATEGORY VII: OPPOSED TO THE RESERVOIR PROJECT

COMMENTER: Donald Frew

COMMENT: Opposed to the reservoir. The whole permitting business is in a sorry state of affairs. The whole permitting process needs to be looked at, solidified and changed in some way to allow these programs, if they are going to go forward to do so much more expediently.

COMMENTER: Thomas Mainor

COMMENT: We need to address water needs on a regional state level, rather than simply letting groups of political jurisdiction do this. The region needs to look at the use of desalinization as a means of meeting our water needs. The area under consideration for this project needs to be preserved as something special; it is sacred land to the Native Americans living there. VIMS and VMRC staff recommended against this project and so did the Army Corps of Engineers before the political pressure got too great.

COMMENTER: Senator Ryan T. McDougle, Senate of Virginia, 4<sup>th</sup> Senatorial District

COMMENT: I represent both King William and King and Queen Counties, which will both be greatly affected by the Virginia Water Protection Permit Number 93-0902, of the Department of Environmental Quality. My constituents continue to be opposed to this permit and I would like to express my concern and opposition to the granting to this permit for the creation of the King William Reservoir. In a previous letter on this subject I noted my concerns that the wetlands mitigation proposed by Newport News will not compensate for the wetlands that will be destroyed by the reservoir.

COMMENTER: Kenneth J. Schmidt

COMMENT: Against the construction of the King William Reservoir. We need to encourage citizens to use less water and to use it more wisely rather than risk harm to our fragile ecosystem.

COMMENTER: Ann Talley

COMMENT: Oppose the reservoir. Oppose the permit extension. Don't want to see the loss of the natural wetlands. I don't think that the reservoir will improve the health of the Chesapeake Bay. Thos extension should be denied and we should not have the reservoir.

COMMENTER: Roger Vines

COMMENT: Opposed to the King William Reservoir due to impacts on recreational uses.

COMMENTER(S): (7): Margo; Mary High Bert; Michael Duggan, MD; Betty Groves; Linda C. Price; M.J. Sissenbond; Evelyn Waring

COMMENT: Opposed to the King William Reservoir Project.

COMMENTER(S): (2) Blair Brandon; Kathy Henning

COMMENT: Opposed to the King William Reservoir project. The extension request for the Mattaponi Reservoir project is not only illegal; the whole project is unnecessary and immoral. The Dragon Swamp area is one of the last pristine wetlands in America. The local Native Americans depend on this area and the shad for more than their way of life; it is the last link with their culture.

COMMENTER(S): (2): Ambler J. & Patricia H. Gilmore

COMMENT: Opposed to King William Reservoir project. Projections for the need for the reservoir failed to take into account that the projected demands would be impacted by ongoing improvements in technology (e.g. desalinization, additional wells, etc.), improvements in water conservation techniques, improvements in waste water recovery and corrections to overly optimistic growth projections. The pursuit of the King William reservoir is nothing more than a bid for regional power disguised as a desperate quest to assure the very survival of the community. The quest for regional power is hardly justification for the environmental and cultural damage resulting from the unprecedented loss of wetlands, the permanent alteration of salinity in the Mattaponi, the negative impact on the shad fishery and the flooding of Native American sacred grounds.

#### CATEGORY VIII: GENERAL COMMENTS

COMMENTER: Martha Kent

COMMENT: The Chesapeake Corporation considered putting a dam in the same section of the Mattaponi and decided that they couldn't and had to spend significantly more money to get their water elsewhere because it was too environmentally detrimental. Encourage you to get information from them and whatever sources that you can. The Department of Historic Resources did sign off and agree to the 106 Review process for the Corps of Engineers for this project. They came back with additional sites for structures. Currently, the Department of Historic Resources has not agreed as a member of the Board, so they are not through their process with the Corps of Engineers yet. I suggest that the SWCB make contact with the Department so that you know what that status is as you move forward.

#### SUMMARY OF COMMENTS RECEIVED AND RESPONSES FOLLOWING NOTICE OF PROPOSED MODIFICATION

Below is a brief summary of the 148 comments received following notification of the proposed modification to VWP Permit 93-0902 – Extension Request and summary of specific responses.

COMMENTER: Glen Besa, Regional Director, Sierra Club

COMMENT: Request that a public hearing be held. In light of the water withdrawal and other restrictions imposed by the VMRC permit, the VWP permit should be modified to reflect those changes, presently it is inconsistent. The SWCB needs to consider and impose performance standards relating to salinity, ecological monitoring and wetlands mitigation. The SWCB needs to thoroughly examine these permit modifications in light of changes that have occurred over the last eight years, i.e., at least two key tracts of land proposed for wetlands mitigation are no longer available. The SWCB should assess the viability of the reservoir in light of the pumping hiatus and water withdrawal restrictions imposed by the VMRC and the Corps.

Opposed to an extension. Two of the proposed mitigation sites are no longer available, so the existing mitigation plan is no longer acceptable. DEQ should not grant a permit extension until an acceptable mitigation plan is submitted and approved with specific sites identified and confirmed as available. If a decision to grant an extension is made then we suggest the following conditions:

- DEQ should require Newport News to provide a current status report on all aspects of the permit before considering the issuance of an extension, including the current status of the wetlands mitigation sites and efforts to find alternatives;
- DEQ should impose a requirement of regular status reports on the progress of the permittee to comply with permit conditions. We would suggest semi-annual reports;
- DEQ should assume the responsibility for conducting public comment periods and hearings with respect to the salinity, wetlands mitigation, ecological monitoring and drought monitoring reports.
- DEQ should affirmatively state in an extension that any application for permit reissuance may only be granted upon a demonstration that the analysis of the reports with respect to salinity, wetlands mitigation and ecological monitoring indicate that the impacts of the project are within acceptable parameters for protection of the Mattaponi and Pamunkey River watersheds.

RESPONSE: The modification request involves the extension of dates; therefore, DEQ does not concur that complex questions exist regarding the extension of dates. The proposed extension dates were specifically listed in the Public Notice for the City of Newport News' permit modification request. The results of the studies that are the subject of this extension will be used to reevaluate the conditions upon reapplication as part of the reissuance review process; to do so in the absence of such information is not possible. The results of the studies will also be used to impose performance standards and make them meaningful. Any permit conditions that are more restrictive would supercede the DEQ permit conditions; the extension to receive the subject reports will help DEQ determine if additional changes to the permit are warranted prior to reissuance consideration.

COMMENTER: Sarah T. Kadec

COMMENT: Request that a public hearing be held in King William County. Newport News has made numerous changes to its proposed project in order to achieve permit approval. Thus the original filing with your office and the environmental impact statements are woefully out of date. Before ruling on this latest request, it seems that a review of the changes made over time would be in order. Despite Newport News' commitment to mitigating the tremendous wetlands loss, it is clear that mitigation not only doesn't work, it does not support the area in which the original wetlands were destroyed. Nothing that Newport News has published convinces me that this project is needed. The State and local governments must address water needs and how much it will cost to meet them. Costs for the reservoir are already far exceeding earlier estimates and this will have a heavy impact on those living in any of the participating jurisdictions. Additional desalinization plants could be built at lower costs and they would meet the water needs until 2050 or longer. Any permit modification should be consistent with the VMRC and other permits, and should take into account statements from the various federal agencies.

RESPONSE: See response noted above.

COMMENTER: Kelly Victor Place, Director of Research and Policy, Coastal Virginia Waterman's Association, Representing 10 Waterman's Associations

COMMENT: Request that a series of public hearings be held. The conditions of a VWP permit extension must be explicitly consistent with those in other permits governing this project. More specifically, those conditions

stated in the permits issued by VMRC and the Corps are not currently reflected in the VWP permit, but should be. It is critical that the totality of the permit conditions be analyzed with respect to the operational feasibility of the project and its potential impacts. We are not necessarily opposed to the extension, but simply want it to be consistent with its express legal intent and requirements. We are concerned that the applicant may not have the ability or the intent to comply with all the permit conditions. The project was originally predicated on withdrawing Mattaponi River Water during periods of high flow, but the VMRC permit conditions currently prohibit such withdrawals during most of the high flow periods of the year. This situation would often relegate the project to attaining the safe yield during the river's low flow periods and would likely be in direct conflict with the Minimum Instream Flow requirements. Virginia is bound by a consent decree to have the Chesapeake Bay removed from the EPA's Impaired Waterway list by 2010 or have the federal government intervene. Will this project endanger Virginia's ability to comply with this edict and what would be the ramifications? If these conditions and changes to the project are determined to be in conflict with the applicant's safe yield, then Virginia law would require that the extension request be denied.

RESPONSE: The issues mentioned will be analyzed when the reports are received and reviewed, as part of the reapplication process for this permit. The extension request is consistent with legal intent and requirements. The extension involves only receipt of reports; reapplication will be required prior to any potential impacts being identified and evaluated. The permit conditions provide for review of all information prepared by the applicant and their contractors as well as monitoring, reporting and enforcement of noncompliance once the project is underway.

COMMENTER: Joseph J. Tannery, Virginia Staff Attorney, Chesapeake Bay Foundation

COMMENT: The loss of proposed wetlands mitigation sites has resulted in substantial changes to the authorized activity, approved conditions, and permitted impacts. Request that the City of Newport News thoroughly document any and all changes to the activities permitted and the attainability of the permit conditions under this permit. DEQ must deny a permit extension where there are changes in originally authorized activity or where the activity and its underlying conditions have become unattainable. Request that DEQ deny the permit extension and undertake a full review of the permit via the reapplication and reissuance process as required by 9 VAC 25-0210-110(4).

RESPONSE: The permit is being extended to be able to receive and review a final mitigation plan based on actual sites. The loss of mitigation sites has not affected project impacts. The extension addresses the specifics of mitigation for the project. Such information is required before project impacts can be taken. Until we have the information from the reports that need to be submitted and reviewed we cannot make any additional determinations on potential project impacts, which is why we have elected to extend the permit to receive those reports. The reports will be available prior to DEQ review of the reapplication for this permit. The extension is for the same activity – construction and operation of the reservoir.

COMMENTER: Dixon W. Tucker, P.E., Virginia Department of Health

COMMENT: We support the time extension request of Newport News Waterworks. We are looking forward to the completion of the project and the activation of this additional source of water for the Lower Peninsula.

RESPONSE: Comment noted.

COMMENTER: Andrew K. Zadnik, Department of Game and Inland Fisheries

COMMENT: This project involves a five-year extension of the current King William Reservoir DEQ permit, issued in 1997. The extension will allow the completion of several pre-construction plans, including the Ecological Monitoring Plan, Salinity Monitoring Plan for the Mattaponi River, and the Wetland Mitigation Plan. We have no objection to this request for a permit extension. We recommend continued coordination during the development of those plans having potential impacts upon fish and wildlife resources under our jurisdiction.

RESPONSE: Comment noted.

COMMENTER(S): (142): Said Abdelhay; Sarah Acedillo; Tarfah Al; Nichole D. Alhouse; Lois R. Angeletti; Alicia Arnold; Margaret F. Babyak; John H. Balkiwill; Regina Baucom; Danielle L. Bean; May M. Bechtold; Cecelia Bowers; D. Breslir; Jessica Brooks; Stacy Brooks; Steve Brooks; Erica R. Brown; Krystal S. Brown; William C. Brown; Aaron Bushman; Hilton E. Carter; Rebecca Evans Chadwick; Dori Chappell; Robert E. Chappell; Lynzee Chelland; Paulette Claus; Olivia Connors; Madienna Corbet; Virginia P. Cowles; Kitty & Jerry Cox; Chris Cruz; Michael Cuellar; Lila Curtis; Stacey Curtis; Josh Davis; Nettie DeBergh; Keith Dobbs; Cecelia Dopeleoski; Stefanie Drill; Nicolette Dubois; Ryan Eaker; Brooke A. Ellis; Annick Ensley; Leslie



Fellows; Joseph Fisher; Dominique Foster; Catherine Fowle; Phillip Freiseis; Amber Gegg; John C. Gianniny; Ed Gran; Leslie Griffin; Patrick Griffin; Hope Griffith; Kathryn Hackett; Shalonda C. Hardy; Anthony Hawkins; Steven Heinitz; Katherine Hemminger; Kathleen P. Henley; W. Todd Henley, III; S. Winter Horn; Geoffrey Hummel; Phillip Indorf; Robert Jenkins; Boom Jeremiah; Aarti Jani; Karsten J. Kane; Steven Kim; Lauren Knuscha; Debra Kozlanski; Pamela M. Lane; Robyann Lemon; William P. Lemmond, III; Tarry L. Leonard; David L. Litchfield, MD; Gwynn Litchfield; Christopher D.A. Manzelli; Don Mark; Joyce Martinez; Tyla Matteson; Jesse McCauley; Janine McClenney; Adam McDaniel; Carol Mckee; Robert B. McKee; Grace Miller; Anoushka Mircharehani; Susan Mitchell; Anna Morency; Brenda Morris; Matthew R. Morris; Lan-Phuong Nguyen; Ernest J. Orlando; Gregory T. Onyschak; Adam L. Parcell; Frangca Paek; Kialyn Pickett; Kelly V. Place; Jared Polchinski; Wesley S. Poole; Ryan Pupa; Theodore N. Quevedo, III; Michael Arthur Rorer; Betty D. Rose; Phillip B. Rose, Sr.; Micah Rusk; Ashanti Ruffin; Jane B. Ruffin; Rafael Salazar; Jan Sanchez; Cherry Sancho; Katelyn Schifano; Amanda Schwartz; Nathaniel Schwartz; Clephol Sessun; Sanchila Shaima; Cattlin Shesman; Robert E. Smith, Jr.; Sandra K. Smith; Marilyn South; Patricia J. Stephens; Robert Lee Stephens; Arielle Stewart; Ariane Swift; Jennifer Tran; Andrew Trask; Aaron Talbott; Anya Taylor; John H. Walker, III; Karen Westermann; Lee Westermann; Donte L. White; Lyndsey Williams; Pamela Winfree; Herbert West; Amy Van Buskirk; K. Veney; Marianna Yuferova; Nicolas Zamora; Matthew Zeh

COMMENT: Request a public hearing. Concerned over the: Need for consistency with the VMRC permit; Need for performance standards; Inadequacy of the Wetlands Mitigation Plan (two key parcels are no longer available); and need to assess the viability of the reservoir as a water project in light of the pumping hiatus and water withdrawal restrictions imposed by the VMRC and Corps permits.

RESPONSE: See response noted above to similar comment from Glenn Besa, the Sierra Club.

In addition, each of those commenting was sent the following response regarding the modification request and the scheduling of the requested public hearing:

“The Virginia Department of Environmental Quality (DEQ) has received your comments regarding the request for a Modification to the Virginia Water Protection Individual Permit 93-0902, made by the City of Newport News, Virginia (permittee) for the proposed King William Reservoir in King William County, Virginia.

The Director of DEQ has determined that a public hearing is warranted to receive further public comment on the specific modifications requested by the permittee. The requested modifications are as follows:

1. Extend the VWP Individual Permit effective term by five years from December 22, 2007 to December 22, 2012, which is the maximum allowable by law.
2. Change the submittal date of the Drought Water Conservation Plan from December 22, 2003 to December 1, 2006.
3. Change the submittal date of the Ecological Monitoring Plan from December 22, 2003 to June 1, 2006.
4. Change the submittal date of the Salinity Monitoring Plan from December 22, 2003 to March 31, 2009.
5. Change the submittal date of the Final Wetland Mitigation Plan from December 22, 2003 to December 31, 2010.
6. Change the submittal date of the Operations and Management Plan from December 22, 2003 to December 1, 2011.

The public hearing is scheduled for Thursday, July 20, 2006, at the James City County Governmental Complex, Building F Board Room, 101 Mounts Bay Road, Williamsburg, Virginia. An informational session will begin at 6:00 PM, followed by the hearing at 7:00 PM.

A public notice announcing the public hearing will be published in the Richmond Times-Dispatch and the Virginia-Pilot on June 11, 2006. The notice will include information on how to comment on the requested changes to the permit that are detailed above.

Thank you for your interest in this Virginia Water Protection Permit action.”

CAPTAINS COVE VPDES PERMIT APPLICATION :  
AND AREAS OF ENVIRONMENTAL CONCERN

SUMMARY OF CITIZEN'S COMMENTS

- GENERAL WATER QUALITY CONCERNS: WILL THE PROPOSAL RESULT IN A VIOLATION OF THE GENERAL STANDARD? PREVENTING ENVIRONMENTAL IMPACT IS A FAR LESS COMPLEX & INEXPENSIVE ALTERNATIVE TO RESTORATION (STANDARDS AND PERMIT LIMITATIONS HAVE FAILED TO PREVENT WATER QUALITY DEGRADATION)

The draft permit limitations for Captains Cove dictate an advanced tertiary BNR treatment facility allowing as nearly a minimal nutrient loading as laws, policy, and technology allow. A higher limit of dissolved oxygen than required by Water Quality Standards and a stricter limitation on biochemical oxygen demand and total suspended solids than required by federal effluent guidelines has been included in the permit since the receiving stream segment has been listed as impaired for dissolved oxygen due to natural causes. Ultraviolet disinfection is proposed for treatment against both viral and bacterial presence. Chlorine limitations are included in the event chlorine is used as a backup. Permit limitations are based upon best professional judgment and are consistent with the general standard citation 9 VAC 25-260-20 which states that all waters shall be free from substances attributable to sewage wastes in concentrations which interfere with the designated water body uses or are harmful to aquatic life...substances to be controlled include those which nourish undesirable or nuisance aquatic plant life. The draft permit under consideration was developed in accordance with all laws and regulations and complies with the Virginia Sewage Collection and Treatment or SCAT Regulations. A reliability Class I facility is required. Biological nutrient removal requirements are equivalent to the enhanced nutrient removal standards to which dischargers on the Eastern Shore which go to nutrient enriched waters of the Chesapeake Bay must meet. As tight as this proposed draft BNR permit is, however, DEQ is prohibited from issuing a permit that would result in the closure of productive shellfish growing waters. VMRC has provided several statements in this regard and those statements were conveyed to the public during the public hearing with DEQ's presentation.

- CONCERNS OVER THE EFFECTS OF INCREASED NUTRIENT LOADINGS TO CHINCOTEAGUE BAY: RESIDENCE TIME IN THE BAY OF TREATED WASTEWATER WOULD BE IN THE ORDER OF 62 DAYS (THE BAY IS SOMEWHAT LAND LOCKED); THERE ARE ONLY A FEW OPENINGS TO THE OCEAN TO ALLOW FOR FLUSHING

These issues caused TRO to re-evaluate the tertiary nitrogen limits (TKN) and the 2.0 mg/l phosphorus conditions already imposed in the draft permit. As a result, permit conditions were made more stringent to tighten the permit to "enhanced" BNR limits of 4.0 mg/l nitrogen and 0.3 mg/l phosphorus. There are only a few facilities in the State with limitations as strict as this draft permit advocates. This permit sets a far reaching and positive precedent for future developments on the ocean side of the shore by requiring facilities to meet Bay standards for nutrient enriched waters. The draft permit limitations for Captains Cove dictate an advanced tertiary BNR treatment facility allowing a nearly minimal nutrient loading as laws, policy, and technology allow.

- ADDITIONAL NUTRIENT LOADINGS, HOWEVER SMALL, EXASPERBATES LIMITED WATER CLARITY & ALGAL ACTIVITY, LEADING TO DECREASED LIGHT TO THE BOTTOM AND NEGATIVE EFFECTS UPON SUBMERGED AQUATIC VEGETATION (SAV)

Information provided by the National Park Service, as well as a Maryland professor, Dr. Price, (Center for the Maryland Inland Bays), concerning the lower flushing rates in Chincoteague Bay, suggests that it may be appropriate for us to recommend to the Board that if the permit is approved, it require this highest level of treatment to remove as much of the nutrient components in the waste water as possible. However, there is no economically viable treatment process capable of removing all the nutrients. As a result, it may be preferable to require a no-discharge system. This has been mentioned by many commenters. In fact, the Secretary of Natural Resources who is appointed by the Governor to oversee the activities of the DEQ, has responded to commenters on the Captain's Cove permit that the Governor has requested ways be identified that encourage consideration of alternatives to the discharge of wastewater for treatment facilities on the Eastern Shore. However, these alternatives will need to consider methods that prevent the introduction of high levels of nutrients into ground water since these nutrients may eventually find their way into the bay.

- CONCERNS OVER SALINITY CHANGES IN SWANS GUT CREEK DUE TO THE TREMENDOUS INCREASE OF FRESHWATER INFLUX: WILL THIS RESULT IN ALTERATION OF NATURAL BIOTA, SAV DENSITY AND THE SPECIES DIVERSITY CURRENTLY PRESENT?

Based upon the creek's profile, this freshwater introduction constitutes approximately 2% of the volume of water in Swan's Gut Creek. DEQ's modeler at our HQ office states that this is not a significant freshwater contribution and should not adversely affect the estuary's salinity levels, particularly since the discharge will be diffused at the stream bottom allowing for better mixing. The requirement for nitrogen & phosphorus removal has been included in this permit to protect the submerged aquatic vegetation population and to reduce the concern for any significant additional nutrient enrichment to the Bay. Draft permit limitations allow for a maximum of 30 lbs. per day of nitrogen. A study such as CORMIX, however, has not been performed to answer this question definitively.

- THERE ARE OTHER VIABLE ALTERNATIVES FOR THE PERMITTEE THAT HAVE NOT BEEN FULLY EXPLORED: I.E. SPRAY IRRIGATION, RECYCLING/REUSE, EXPAND OR UPGRADE THE CURRENTLY PERMITTED LAND APPLICATION SYSTEM (INFILTRATION BASINS) OR DISCHARGE TO A CONSTRUCTED WETLANDS

There are several land application alternatives available for consideration by the developer, but perhaps none that would allow him to develop as many lots as he desires. He has not divulged to DEQ what alternatives he may or may not have explored before deciding upon seeking a discharge application.

- HABITAT IMPACTS UPON ENDANGERED SPECIES SUCH AS THE BALD EAGLE: SWANS GUT CREEK PROVIDES A FOOD RESOURCE

We are required to address and review the impact of a proposed permit to threatened and endangered species. We depend on sister agencies with specialized expertise to assist us in properly assessing potential impact of a proposed permit to certain aspects of the environment such as threatened and endangered species. We have received no comment from The U. S. Fish and Wildlife Service, The Virginia Department of Game and Inland Fisheries, the Virginia Institute of Marine Science, or the Virginia Marine Resources Commission that the discharge would impact any threatened or endangered species.

We have received comment from some of these agencies regarding the potential impact to the Chincoteague Bay ecosystem from nutrients contained in the discharge. This served as a basis for our requirements for nutrient removal to the level in the permit, 4 milligrams per liter (parts per million) for total nitrogen and 0.3 milligrams per liter for total phosphorus. This is the same level of treatment dischargers to the Chesapeake Bay on the Eastern Shore must meet as required by regulations to reduce the nutrient impact to the bay. At present there are no similar, specific nutrient regulations that affect discharges to the Atlantic side of the Eastern Shore.

- CONCERNS OVER IMPACTS AND CONDEMNATION OF A SHELLFISH RESOURCE BOTH FROM AN ENVIRONMENTAL, AS WELL AS AN ECONOMIC STANDPOINT; CONCERN FOR AN EXPANDED CONDEMNATION OF BAYLOR RECREATIONAL GROUNDS

Input from the Virginia Marine Resources Commission, who serves as our consultant and expert in matters pertaining to shellfish, has indicated that there are no shellfish leases or public shell fishing grounds in the area of proposed prohibition or condemnation. VMRC has previously commented on several occasions that, in general, there is not a significant shellfish resource in the area of impact (due primarily to unsuitable bottom habitat). On a June 17th field trip, however, VMRC's Jack Travelstead, Chief of the Fisheries Management Division, concluded that "a waterman familiar with this area would find it suitable for periodic commercial harvest" (letter from Mr. Travelstead dated June 20, 2006). Although Mr. Travelstead's observation is not based on a scientific survey or on actual evidence of any commercial harvesting in the area, DEQ is prohibited from issuing a permit that would result in the closure of productive shellfish growing waters. In this latest correspondence Mr. Travelstead concludes that the proposed condemnation area contains "small areas of commercially viable quantities of hard clams". This kind of information had not been provided to us previously by the VMRC until a day before the hearing and may dictate a recommendation from us that the permit be denied. However, the final decision is up to the Water Control Board.

Baylor grounds appear to be concerned primarily with oyster habitat and their restriction appears to apply to VMRC only. There are 3 small Baylor Ground areas affected by this proposal. One area is some distance upstream on Swan's Gut Creek and is apparently on what is now dry ground. The other two areas are

at the mouth of the creek. They presently lie partially within an already existing DSS prohibited area. Per VMRC there is no viable oyster population in these Baylor Grounds and “because one of the 3 pieces of Baylor is now located in a condemnation zone, its value is diminished”.

- CONCERN THAT DENIAL OF THE PERMIT WILL RESULT IN GREATER ENVIRONMENTAL HARM BY PRIVATE SEPTIC TANK SYSTEM PROLIFERATION AND/OR FAILURE RESULTING IN CONTAMINATION OF BOTH THE BAY AND THE YORKTOWN-EASTOVER AQUIFER (E. SHORE’S POTABLE WATER SUPPLY). IT HAS BEEN REPORTED THAT ANNUALLY 30,000 SEPTIC SYSTEMS GENERATE 150,000 POUNDS OF NITROGEN TO THE ENVIRONMENT (THE PROPOSED STP WOULD GENERATE LESS THAN 11,000 POUNDS ANNUALLY)

The Virginia Dept. of Health is the Agency which exclusively has jurisdiction over septic tank drain fields and system failure. The developer, however, is misleading, in stating that all of these homes would resort to drain fields. First, it is doubtful that the Health Dept. would allow this many lots to have drain field permits (some don't perk) and second, many of the existing homes are connected to the current treatment system which provides secondary treatment prior to one of 4 infiltration basins. Sand filtration greatly reduces nitrogenous components and if the system is operated properly should not cause degradation of the aquifer.

WEIGHT OF CONCERNS IN CATEGORIES:

OUT OF THE 420 RESPONSES RECEIVED:

300 had concern that denial of the permit would result in greater environmental harm by septic tank system contamination to the Bay or water supply aquifer (responses from Captains Cove residents sent to DEQ) – last category above

120 had water quality concerns / concerns over nutrient loadings to the Bay and fell into any or all of the first 6 categories above). Of these same 120 responses:

40 mention or highlight specific shellfish impact concerns (next to the last category above)



## Additional material on The Galleria

### Summary of comments presented during the public hearing

#### Daniel Gecker (Citizen)

- Resident of Crestwood Farms. Past President of Crestwood Farms Community Association. Currently the Midlothian district representative of the Chesterfield Planning Commission and currently Vice Chair of Planning Commission.
- The proposal before DEQ is essentially a concept plan for the buildings; it is a phasing from the counties viewpoint, in that the transportation improvements shown are not the final improvements that will be required when full buildout occurs.
- The zoning would allow significant residential, retail or office, it does not require to be mixed use, even though it has been represented that way, but under the zoning there are no guarantees of that.
- DEQ cannot say that we have the least impacting design when you have not analyzed the full buildout and what the required road improvements at full buildout will do.
- He contend that at full buildout, the magnitude or size of this road would not be required because the rest of the road system would carry some of the traffic that is intended for this road.
- He urged the Board to look at the full zoning case and ask the developer to lay out what he proposes at full buildout and then make a determination about the least offensive way to achieve the road network with the least impact on the wetlands.
- The neighborhood agreed to increased density on the HMK site in exchange for a fairly significant network of road improvements that would mitigate the traffic impact of that site.
- The neighborhood said that the economic benefit to the county of this project was greater than the impact to the community and said to the board of supervisors in 1992 that they were comfortable with the proposal and asked the developer to move forward.
- At the time it was projected that what we would have there Galleria which was a large fashion style mall, ancillary office space that you see now in the Boulders and some residential.
- Was contacted by Joan Salvati, the water quality director for Chesterfield County and now is working at the Chesapeake Bay Local Assistance Department.
- Joan Salvati, the Counties Water Quality Director, told him she was concerned about the proposal to impact wetlands. She told him that these are high functioning and very important to the ecosystem.
- Chesterfield County, through Mr. Lane Ramsey, sent a letter that said that the county opposed this proposal.
- After a political firestorm Mr. Ramsey to retracted the counties objection saying that the overall economic benefit of developing this site was still significant enough that the county would no longer oppose this proposal.

#### Doug. Ferwald (Citizen)

- DEQ is making the decision without fully seeing what is being developed.
- Seems a shame to destroy wetlands when you do not have the final facts of what is going to be developed.
- Some of the economics have changed for the county and the community which would change the need for the project.
- There are enough other alternatives to the Galleria in terms of developments just right up the road off Chippenham Parkway.

#### Margaret Waddell (Citizen)

- You cannot say that any habitat destruction does not have an impact. Any fragmentation or destruction of habitat is damage to the environment and ecology.
- The areas downstream would be impacted by gasoline, motor oil, antifreeze, runoff off the parking lot. She does not see how you could totally minimize flood control.
- She doesn't see how the requirement to buy wetland credits somewhere else is going to help an already existing and established wetland environment
- The more we destroy habitat in this country, the more endangered we all become.

Ferd Sanderson (Citizen)

- Questions if there been a scientific study of this area, of the wetlands being affected, and if any discovery been made of listed threatened or endangered.
- Questions if anyone has addressed the issue of the light to illuminate buildings and/or parking lots and how that will affect the environment and neighborhood.
- Questions if the wetland within the ramp circle at the eastbound exit of Powhite onto northbound Chippenham is part of the large swampy set aside.
- What factors were involved in the Powhite swamp preservation? Was it wetlands protection or was the Endangered Species Act involved.

Patricia Stansbury (Citizen)

- The area is a vast green space and it is like walking through a door into your neighborhood.
- There is no way that we can replace the kind of nature that we have around here. We live on the edge of a large city and we have a rural lifestyle where we might look out and see a deer in the back yard.
- There is so much vacant office space and residential space up and down Jahnke Road that we really do not need any more.
- Many areas are already paved. We do not need to pave anymore. We do not need to tear down any more trees. Let us just make use of what we have already.

Virginia McMillan (Citizen)

- She urged DEQ to listen to what we heard at the hearing.

Bell Fiore (Citizen)

- She thought that Chesterfield County has felt left of the income that is generated by some of the shopping centers that have been fielded by other counties and the city.
- There had to be a certain density in order for the project to be economically feasible.
- She was concerned about Powhite Park, which is downhill
- She cannot imagine there being a way for the runoff off gas-coated parking lots that would not affect the animals.
- She hopes there will be a study done of what will happen to Powhite Park.

Earnest Wilson (Citizen)

- He has found that the scientific community is not of one voice about mitigation. Many scientists object to the mitigation idea because of many things, including that it encourages development.
- You have development in wetlands with the idea that you have it here and then you can get it somewhere else and most of these places are outside of the city. The nature is actually necessary more so in the city than outside the city.
- Empirical study finds wetland mitigation banking shortchanges urban wetlands. Mitigation banking shifts environmental services away from the urban areas and into rural communities.
- He has found that mitigation plans are not always followed. A publication from the GAO states that the Corps of Engineers does not have an effective oversight approach to ensure that compensatory mitigation is occurring.
- People cannot agree on what the standards for mitigation should be. One study indicates that a relatively low percentage of proposed mitigation achieves the stated area of wetland or the wetland type achieved was largely inconsistent with approved plans and specification.
- The very idea that these things for instance that mitigation is a well-established science is simply incorrect because you are taking a wetlands that have been established for hundreds if not thousands of years and putting in an artificial wetland, which you have built. May times nature is much more complex than we can know and so it is a question as to whether mitigation will actually accomplish what they have set out to do.

Gloria Byland (Citizen)

- This area will not be a gem anymore if we wipe out that wetland area.
- The Delaware River is experiencing huge flooding because of the Poconos being paved over. If all these wetlands are filled going toward the James River we may be facing extreme flooding up in this area.

Tim Brown. (Citizen)

- The water coming from the ground in the Crestwood Farms area is as clean as you could find in Chesterfield.
- It does not make sense to mitigate the wetlands Charles City County.
- DEQ would not be able to evaluate the project because the project drawings were developed prior to the Gaston storm and are therefore not accurate.
- DEQ has a great responsibility to everyone downstream. Wildlife from the site is not able to hop under the bridge and Herons do not come from Powhite creek.
- A camp in Northern Virginia he is involved in was pretty much canceled because of flooding downstream. Northern Virginia growth is not what we would like the county to become.
- Buford Road will become dangerous after this is developed because of flooding resulting from the development. The middle school, high school, elementary school buses run up and down Buford Road.

David Hunt (Citizen)

- President of Crestwood Farms residents association
- Pointed out that the 110 individuals in attendance made up about half of the households in the small community.
- Pointed out that no one in the audience, except the developer, was in support of the project.
- Opposed to this project mitigating by purchasing credits outside the county. Once growth occurs by the year 2050, that Charles City will be facing the same issue, and someone will be taking there wetlands and asking them to purchase wetlands in the western part of the state.
- Objected to the impact of stormwater on Powhite Park.
- Concerned about the impact of vehicle pollution due to the Galleria on wildlife, water quality and nearby residents.

Daryl Groff (Citizen)

- Indicated that he had turned in a request to personally dredge out the stream to reestablish the creek on his property and received a denial from DEQ as well as the Corps of Engineers who said it was a wetland and had to stay that way.
- Found it ironic that we are now speaking of the development and the approval of your department, as well as the Corps of Engineers.

Doris Deterick (Citizen)

- Quoted the US EPA comment letter on this project that states, “the wetlands that will be impacted appear to be diverse, very wet swamp, these types of wetlands, particularly those located in rapidly developing areas provide water quality and habitat functions critical to the health of the Chesapeake Bay, an estuary of national importance. It is the opinion of EPA that proposed project would result in unnecessary, substantial and unacceptable impacts to aquatic resources of national importance.

Dr. Clifford Allen (Citizen)

- Since he has allowed the habitat in his yard to recover, he has noticed that animals have prospered like never before.
- The environment is an interlocking system and you cannot tamper with the delicate balance of the environment without a severe impact.
- We should consider the impact on the individual and the community, on their peace of mind, on our creativity, on those elements that we consider very important.
- “Nature never did betray the heart that loved her.

Maureen Baxter (Citizen)

- Has seen many buildings and communities go up in the area.
- Indicated that the project feeds into the James River, which is under stress. Concerned that if we destroy even more of the wetlands we are just exacerbating this problem.
- Concerned about the purchase of mitigation bank credits that were not near the project.

Barbara Curling (Citizen)

- This activity will affect the woods and wetlands, stream channel, many tributaries in the James River Watershed and the body of water, which flows by their residence in Crestwood Farms.
- Concerned for neighbors who will be affected by the loss of the woods and wetlands.

- The listed compensation will not compensate Crestwood Farms for the loss of their wildlife habitat, even though the acreage might seem very small in the scheme of things.
- With the lake and the streams in Crestwood Farms, something can be done at the impact site.

Nancy Quinn (Citizen)

- Resident of Crestwood Farms and the chairperson of the Lake Page committee.
- The wetlands that are in the neighborhood and the wetlands that are immediately downstream in the projected development are very special.
- An impact on the project site would affect also the wetlands, and the animals, and the plants for which the neighborhood provides the wetland habitat, as well as the site, as well as downstream.
- Such a change to the area would affect everything from the temperature to the habitat.

Johnson Kanady (Citizen)

- We need to look at the area to the south because this is going to be seriously impacted by any development in this area. The wetlands will be degraded by virtue of the changing water flow.
- This development is going to increase the ambient air temperature considerably,
- This whole application is premature because the developer has not told anyone what they are actually going to do here. We do not know if it is going to look like this or if it is going to look different when completed.
- Understands that they have their zoning and they can do their project.
- It seems completely premature to grant this application without more facts about what is going to happen there.

Roger Mathews (Citizen)

- The quality of the water filtered by these wetlands contributes to the flow of the James River. It is vital to this community, the natural beauty of the area, and it is vital to the health and enjoyment of those who make use of the area for recreation.
- Concerned that the compensation will occur Coal Mine Park in Midlothian, Virginia, which not near the project.
- They want to keep the community, ecosystem, plants animals, flood control, erosion control, and water quality rather than move them to a coal mine in Midlothian or a farm in Charles City County.

Laura Rothrock (Citizen)

- Did not know how buying credits in other areas will help the local animals.
- There will be additional lighting but there will also be additional noise that we will have to deal with from this development.
- Concerned about what will happen to the people if we develop these wetlands.

Scott Josenhans (Citizen)

- Knows that there are not many wetland areas.
- The area has a strong impact on the surrounding region and the development will have an impact of many people.

Eddie Martinez (Citizen)

- Cares about the environment and is not an anti-capitalist. Somebody has to make money for us to survive but it should be done right.
- A number of developments have become decadent since they were built, which is also what will happen here.
- The traffic and lighting is going to be horrendous. Everything will be horrendous.
- We need to protect what we have. For us, for the kids.

David Saunders (Citizen)

- Questioned what happens to the upstream Waters of the US, what happens to the downstream Waters of the US. Are they going to remain as pristine?
- What are the impacts of the wetland areas where you now to propose 36" storm pipes coming through? Are these wetlands, emergent and forested wetlands, as they are noted on the drawing, going to be remaining what they are or are they going to be destroyed and impacted?



- They are protecting the Chesapeake Bay in their back yards and would like to keep doing that because they get to enjoy it.

Rusty Rothrock (Citizen)

- Quoted a brochure that states, “The mission of the Department of Environmental Quality is to protect the environment and the well being of all Virginians”.

Dr. Dave Gary (Citizen)

- Went on record opposing this development.
- Supports the previous speakers who have spoken out the damage to wildlife and the ecological system.
- Cloverleaf Mall near this development is an absolute disaster and questions how long this project will remain brand new, generating revenue, and then become a big disaster that will have disturbed the ecosystem and be a drag on the economy.

Jane Hoffer (Citizen)

- Crestwood Farms is a lot like the Greenbrier neighborhood in Fairfax County 20 years ago. Since Fair Oaks Mall was built, they have seen deer all over the area because they don’t have food.
- DEQ will look at the damage that has been done to western Fairfax County because of being in Northern Virginia, and how it might in the years to come impact this area of Chesterfield County and the areas downstream.

Virginia McDaniel (Citizen)

- Is concerned about the lack of concern that our leaders have shown in approving one development after another without properly considering all the various impacts.
- If DEQ is concerned about the environmental quality and not just wetlands then they should take into consideration the impact that are the responsibilities of other agencies.

Len Tuck (Citizen)

- The project will have a tremendous impact on the roadways and a tremendous impact on the traffic.
- DEQ’s mission is to not only look at the environmental quality, the life of the wetlands and animals that occupy those wetlands but how it impacts those of that are left behind.
- Urged DEQ to deny this permit.

Written comments provided during public hearing comment period

John Lain (McGuire Woods) (Applicant’s representative)

- Permitting process is designed to ensure that impacts are minimized to the greatest extent practicable and to then compensate for the unavoidable impacts.
- The point of many of the comments that a permit should not be issued because of these impacts misses the point that the impacts and how to lessen and compensate for them, are the reason there is a permit process in the first place.
- The applicant designed the project to minimize impacts to wetlands. Of the 27 acres of wetlands on the project, the project only impacts 3.53 acres.
- HMK is providing mitigation of these impacts so that there will not be a loss of wetland and stream resources because of the project impacts. In fact, the mitigation for the wetland impacts will be provided at ratios higher than typically required by DEQ.
- The applicant is also funding a stream restoration project, sponsored by Chesterfield County, as mitigation so that the restoration can be provided in Chesterfield County.
- The applicant is also providing voluntary buffers along uplands adjacent to intermittent streambeds that are not required by law.
- The mitigation that is proposed is valid and appropriate mitigation under the permitting rules and regulations, which allow offsite mitigation within the same watershed when onsite mitigation is not practical.
- Stream mitigation is being done in the same jurisdiction as the impacts, which is not the norm because like with wetlands, mitigation is typically accomplished through a mitigation bank or trust fund contribution.

- As part of the permit process, a check is performed with the state wildlife agencies to determine whether threatened or endangered species are present. This process was followed and no threatened or endangered species are likely to be located on the property.
- If the project opponents have specific information about the presence of threatened or endangered species, HMK would work with DEQ to locate the species, but without real information, the comments do not raise a substantive issue.
- Comments regarding traffic, wooded buffers and reduced property values are local government issues and are not proper issues for DEQ's consideration during the VWP permitting process.
- The overall jurisdiction of stormwater issues related to the property lies with Chesterfield County and the Department of Conservation and Recreation.
- What may or may not be the eventual full build out of the project is not relevant to the part of the project that is being proposed now.
- If and when there are additional phases does not affect HMK's need to build what it is proposing now, including the construction of Boulders Parkway Extension.
- The construction of Boulders Parkway Extension is related to future build out in a way that further evidences the necessity of building the road.
- VDOT requires the ramp connections to limited access roads to connect to publicly dedicated roads.
- In the construction of Powhite Parkway extension, VDOT recognized this corridor by constructing an underpass for the proposed road, constructed at HMK's expense.
- HMK requests that the preliminary decision to approve this permit be made the final staff recommendations to the State Water Control Board.

Charles Price - Sierra Club Falls of the James Group

- Falls of the James Group, Virginia Chapter Sierra Club Strongly opposes DEQ's issuance of a VWP permit for the Galleria/ Boulders Parkway Extension
- The extensive build out scenario and the excessive road access requirements would have enormous hydrological impact in the Long Branch and Powhite Creek watersheds.
- The wetlands impacts do not accurately indicate the magnitude of impacts to the large wetlands areas associated with Powhite Creek and Long Branch Creek.
- The raised road bed hydrologically cuts the wetlands in half. This will assuredly cause greater watershed disruption, and more flooding.
- The policy of mitigating wetlands by banking them elsewhere would be woefully misapplied in this location. Clearly, the wetlands are needed here, and their loss would make significant disruption to surface flow, flood control, and groundwater recharge.
- The hydrology in the northern portion of the property will be significantly disrupted by the developer's proposal to pave and develop what appears to be 90% of the site.
- The 25-foot buffers proposed for the creek and two streams in the northern tract are woefully inadequate.
- The proposals wetland impacts are disruptive to the critical hydrologic area when considered cumulatively.
- Two thirds of Phase I of the project is within designated Resource Protection Areas, in which development is prohibited. The Galleria proposal flagrantly and extensively violates the spirit, and letter, of the Chesapeake Bay Preservation Act.
- The major premise of this proposed project – intensive office development and parking for an inaccessible site, centered in the naturally occurring regional stormwater retention basin/wetlands, surrounded by major parkways and low density residential neighborhoods is fundamentally flawed.
- Traffic impacts on the county and city road networks, already beyond their carrying capacity, show the futility of the poorly conceived project. Infrastructure costs would be staggering.
- Why ruin a critical wetland and stream area, which is deemed mostly off limits by the Chesapeake Bay Preservation Act, when no more suitable development opportunities about a short distance further along the Chippenham Parkway.

Otis Curling (Citizen)

- This activity will affect the woods and wetlands, stream channel, many tributaries in the James River Watershed and the body of water, which flows by his residence in Crestwood Farms.
- He has enjoyed the waterfowl, herons, ducks and other wildlife that have flown over their home from this wetland area.
- The project compensation in Charles City County will not bring the Crestwood Farms area any birds flying over the area. They cannot get excited about the compensation.
- Do not feel that the listed compensations will really compensate Crestwood Farms residents for the loss of wildlife habitat and question the appropriateness of the compensations.
- There is something which could be done to compensate right here at the impact site.

Dan Gecker (Citizen)

- Surprised that the state was told that the concept plan for the permit was presented as the final development plan.
- He does not see how the water quality impacts are reasonably mitigated unless you also look at the development.
- One of the important issues discussed during the planning of the project was the extensive road construction required. The current request is only for a portion of that which is required at the completion of the project.
- The road network needs to be completed in conjunction with this request.
- The site drains into Powhite creek and then to the James River. The wetlands and streams act as a natural filter for pollutant removal.
- Some concern has to be given to the already poor water quality of Powhite Creek.
- The 2004 Chesterfield County assessment of streams and wetlands reported that the Powhite Creek watershed had one of the highest proportions of “Severely impaired” sites in the county. One bioassessment site, POW-2 downstream of Buford Road, indicates a “severely impaired site.”
- He spoke in favor of the development when the zoning was approved and continues to support that zoning case. He does not support the accelerating the benefits to the developer without also accelerating the protection to the neighborhood and County built into the full case.
- Detailed construction plans will have to be prepared to ensure the proffered collector distributor system can actually be constructed.
- Request that the Board not issue the permit.
- In the event that a permit is issued, he requests that all the mitigation be done in the Powhite watershed and the permit specifically reference that it is not an approval of plans for the ultimate location of Powhite Creek as is discussed in the zoning case for the project. The zoning case allows the planning commission to grant exemptions to the Flood Plain Management Ordinance.

Crestwood Farms Residence Association (D. Curtis Sanderson – President)

- Purpose of letter is to express concern over the DEQ’s proposal to issue a permit for the project.
- It appears that the selected Alternative/Overall summary map, which is being used for the review of the permit application, is nothing more than a conceptual plan for an unknown use of the property.
- The plan does not specify what the buildings are or whether the proposed parking is adequate for the intended use. The plan has not been reviewed by the County to determine if it meets transportation or emergency access requirements.
- The county has not reviewed stormwater management plans to determine if the project meets local storm water requirements.
- The project will generate a significant amount of impervious cover, which will exacerbate an already existing flooding and pollution problem in Powhite Creek.
- Has a detailed analysis been executed to determine if the BMP’s shown in the conceptual site plans are adequate to meet the phosphorous reduction requirements for the development or attenuate flood flows?

Continued - Crestwood Farms Residence Association (D. Curtis Sanderson – President)

- Powhite Creek is a designated FEMA floodplain Zone. Has an analysis been done to determine whether the bridge crossing meets the VDOT and FEMA flooding requirements?

- Without addressing questions and issues raised above, it is difficult to effectively address avoidance and minimization of the project.
- Allowing this development will endanger the environmental quality of the area. Traffic on Jahnke and Buford roads through Historic Bon Air will increase. Deforestation will destroy wildlife habitat and wetlands causing more pollution in an already polluted Powhite Creek. It will increase noise levels, pollutants and temperatures and have severe impact on the area residences lifestyle and property values.
- With the troubles associated with the pollution of the James River, we cannot afford to increase possible polluted run-off that a development will generate.
- The developer has not stated a specific use of the project other than it will be mixed use. If a specific use of a project is not stated, it is difficult to determine whether there is public or private need for the project.
- Is there a need for more shopping or office space in the area since there is vacant office and retail space within three miles of the property?
- The applicant cannot demonstrate a need for the project, nor can he effectively demonstrate proper avoidance and minimization until a use is identified, and a detailed site plan is generated which meets County performance criteria.
- They urge the board to deny the permit as currently submitted.

Emma K. and Gary Price (Citizen)

- They want to go on record highly opposing destroying wetlands no matter where creation of new wetlands is designated.
- Why has no one from the DEQ made an updated study of the wetland in question to see if there are any endangered animals, plants, and waterfowl? This study should be done before issuing a permit.
- Concerned when the moderator at the informal session made a statement of “when the permit is issued”. An apology was made for the Freudian slip but how could DEQ possibly consider the permit a “done deal” when there were 110 people present with legitimate objections.
- Crestwood Farms and the James River will suffer because the wetlands and streams act as a filter for the River’s tributary system.

Joyce Caldwell (Citizen)

- How would residents of Bon Air and the resident wildlife be compensated for these losses. How does the purchase of wetland credits in Charles City County and the restoration of the stream channel in Midlothian help the Crestwood Farms residences?
- Chippenham and Powhite Parkway are already choked with cars.
- As the woods are destroyed for development, she no longer hears or sees as much wildlife as she used to.

Scott Josenhans (Citizen)

- Did not receive drawings and other materials that were promised at the hearing.
- Because of the lack of follow-up by the Commonwealth in providing promised information, others found themselves less equipped and informed than those who were already provided for.
- Time was wasted during the question and answer session. This included the need to repeat questions because microphones were held by the DEQ representatives and not provided to the participants.
- The gist of some questions were “tainted in translation” and the time was being “burned” in order to restrict individuals from participation.

Patricia Stansbury (Citizen)

- To say that an event on one waterway will not have an impact on a waterway connected to it is false. The crisp boundary on the plat does not exist in nature or reality.
- Destroying a wetland at this time is contrary to all the work your agency and that of surrounding states are doing to clean up waterways.
- There are already thousands of square feet of vacant space, retail space, and residential space within a mile of the proposed development.



- Once additional impacts on surface waters occur, financial compensation will not be an issue because ecosystem is damaged.
- Please continue efforts to preserve the progress we have made toward improving our water resources. Do not let short-term benefits to a real estate developer determine what is good for our community.

David Barnes (Citizen)

- Extremely concerned about the devastating effect that the development will have on environmental quality and traffic safety.
- The development will disrupt the flow of Powhite Creek and negatively impact ecosystems upstream and downstream.
- Does not see how we could evaluate, much less approve, the proposed development without a comprehensive study of its impact on the environment upstream.
- Any change in water flow through the region will destroy upstream wetlands, in addition to destroying the wetlands at the site of the development.
- The development will disrupt waterflow to the James and significantly add sediment and pollution load dumped into the James.
- Concerned about the hazards that this development poses to traffic safety in the area.

Robert and Lisa Roy (Citizen)

- Does not believe that this development will benefit the environment. A natural, high functioning wetland in an urban area such as ours is a very valuable asset.
- The neighborhood has overwhelmingly shown their disapproval and is relying on the agency to protect his property on behalf of the community.

Jody Bruce (Citizen)

- Various studies and findings of professional surveyors and environmental agencies conclude that development in this natural drainfield and paulustrines will have an irreversible, detrimental impact upon the environment of native species.
- Trading the wetland environment for a few acres in Charles City County does not seem equitable. Does Charles City County have the deficit of wetlands that Bon Air has?
- It looks like the Coal Mine Park project has been on someone else's agenda for a while and has simply been waiting for a developer to pick up the tab in return for your permission to proceed.
- Consider how this project reflects on the DEQ and Chesterfield.
- The bureaucratic political engine driving this environmentally intrusive venture has seemed to ignore its local impact on streams and wetlands.

Leslie Little (Citizen)

- Opposes the approval of the permit that would allow HMK LLC to destroy wetlands and streams that are vital to the James River watershed.
- Destroying these wetland could seriously affect the streams and lakes that feed this watershed and the James River.
- It does not make sense to destroy well established wetland for mixed use development when there are plenty of underutilized commercial areas nearby